TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~403.~~ 188.

CHARLES J. CARPENTER, TRUSTEE OF SARAH S. McCAMANT, PLAINTIFF IN ERROR,

vs.

CHARLES S. RANNELS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED JULY 26, 1872.

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a The United States of America to Charles S. Rannels, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December, A. D. 1872, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Missouri, wherein Charles J. Carpenter, trustee of Sarah S. McCamant, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Philemon Bliss, presiding justice of the said supreme court of the State of Missouri, this twenty-third day of November, in the year of our Lord one thousand eight hundred and seventy-one.

P. BLISS, *Presiding Judge.*

b The undersigned, attorneys of record for the defendant named in the within citation, admit that the same has been duly served on said defendant this 29th day of November, 1871. We also admit that the subject-matter of the suit mentioned in said citation exceeds in value the sum of two thousand dollars.

CHAS. S. RANNELLS,
By his guardian, R. M. RENICK.

(Indorsed:) Chas. J. Carpenter, trustee, &c., P. E., vs. Chas. S. Rannels. Citation. Returned and filed November 29th, 1871. Francis Minor, clerk, per J. F. Baier, D. C.

c UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the supreme court of the State of Missouri, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said suprrme court, before you, at the March term, 1870, thereof, between Charles J. Carpenter, trustee of Sarah S. McCamant, plaintiff, and Charles S. Rannels, defendant, a manifest error hath happened, to the great damage of the said Charles J. Carpenter, trustee, as aforesaid, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December, A. D. 1872, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, chief justice of the said Supreme Court of the United States, this twenty-third day of November, in the year of our Lord one thousand eight hundred and seventy-one.

Issued at office in the city of St. Louis, with the seal of the circuit

court of the United States for the districts of Missouri, dated as aforesaid.

AUSTIN DRAKE,
Clerk C. C. U. S. Missouri Districts.

Allowed by—

P. BLISS, *Presiding Judge.*

d STATE OF MISSOURI, *ss:*

I, Francis Minor, clerk of the supreme court held at St. Louis, of the State of Missouri, in obedience to the mandate of the within writ, herewith transmit to the honorable Supreme Court of the United States at Washington a full, true, and complete transcript of the record and proceedings in the within-entitled cause, as fully as the same remain of record and on file in my office.

In testimony whereof I hereto set my hand and affix the seal of said court, at office, in the city of St. Louis, this 27th day of June, A. D. 1872.

[SEAL.] FRANCIS MINOR, *Clerk.*
Per JOS. F. BAIER, *D. C.*

(Indorsed:) Charles J. Carpenter, trustee, &c., pl'ff in error, vs. Charles S. Rannels, def't in error. Writ of error to the supreme court of the State of Missouri. Returned and filed. Filed November 29, 1871. Francis Minor, cl'k, per J. F. Baier, D. C.

1 STATE OF MISSOURI, *ss:*

Be it remembered that heretofore, to wit, on the 2d day of October, A. D. 1868, there was filed in the office of the clerk of the supreme court, held at St. Louis, of the State of Missouri, a transcript of the record and proceedings in a certain cause lately pending in the Saint Louis circuit court, which said transcript is in the words and figures following, to wit:

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that heretofore, to wit, on the 26th day of February, A. D. 1867, there was filed in the circuit court of St. Louis County, with the clerk thereof, a petition, which petition is in the words and figures following, to wit:

Petition.

In the circuit court of St. Louis County, of April term, 18 . County of St. Louis, *ss:*

CHARLES J. CARPENTER, TRUSTEE FOR SARAH S. McCAMANT, plaintiff,
vs.
CHARLES S. RANNELLS, ROBERT M. RENICK, his guardian, and Thomas Finn, defendants.

Plaintiff states that on the first day of April, 1864, he was lawfully entitled to the possession of certain premises, being a piece or parcel of land, situate, lying, and being in the county of St. Louis, and described as follows, to wit: Two hundred arpens of land situated in township 45 north, of range 6 east of the fifth principal meridian, located under

and by virtue of New Madrid certificate of relocation number 511, issued in the name of John Butler or his legal representatives, it being United States survey 2852, in St. Louis County; and defendants and those under whom the' claim have unlawfully withheld possession of said premises for two years and nine months before this suit was
2 brought; and this plaintiff further states that, being so entitled to the possession of the above-described premises as aforesaid, the defendants, on the second day of April, 1864, entered into the said premises, and unlawfully withholds from the plaintiff the possession thereof. Plaintiff avers that the defendants was in possession of the above-described parcel of land at the time of the commencement of this suit. Plaintiff asks judgment against the defendants for the possession of the said premises, and damages for the detention thereof, and for the value of the rents and profits thereof in the sum of six hundred dollars, and for the monthly value thereof, and for costs, and one thousand dollars for damages for timber cut & for waste.

BRITTON A. HILL AND D. T. JEWETT,
Attorneys for Plaintiff.

Whereupon a summons issued, directed to the sheriff of St. Louis County, as follows, to wit:

Summons.

COUNTY OF ST. LOUIS, *ss:*

The State of Missouri to the sheriff of St. Louis County, greeting:

We command you to summons Charles S. Rannells, Robert M. Renick, his guardian, and Thomas Finn, to appear before the judges of our circuit court on the first day of the next term thereof, to be held in the city of St. Louis within and for the county of St. Louis, on the first Monday of April next, then & there to answer the complaint of Charles J. Carpenter, trustee for Sarah S. McCamant, as set forth in the annexed petition, and have you then & there this writ.

Witness Frank A. H. Schneider, clerk of our said court, with the seal thereof hereto affixed, at office in the city of St. Louis, this 26th day of February, in the year of our Lord eighteen hundred & sixty-seven.

F. A. H. SCHNEIDER, *Clerk.*

Sheriff's return.

Upon the back of which summons the sheriff made return as follows, to wit: Executed this writ in St. Louis County on the 2d day of March, 1867, by delivering a copy of the writ and petition, as furnished by the clerk, to Robert M. Renick, guardian of Charl' S. Rannells; and I did further execute this writ in St. Louis County on the 5th day of March, 1867, by leaving a copy of the writ, as furnished by the clerk, at the usual place of abode of Charles S. Rannells, with a white person,
3 a member of his family, over the age of fifteen years. Thomas Finn cannot be found in my county.

JOHN McNEIL, *Sh'ff.*
EDWARD J. EBAUGH, *D'p'ty.*

And on the 3d day of April, A. D. 1867, an answer was filed, which is in the words and figures following, to wit:

Answer.

In the St. Louis circuit court, county of St. Louis, *ss:*

CHARLES J. CARPENTER, TRUSTEE OF SARAH S. McCAMANT,
vs.
CHARLES S. RANNELLS, ROBERT M. RENICK, his guardian, and Thomas Finn.

Defendants deny that on the day stated, or any other day, the plaintiff was lawfully entitled to the possession of the tract of land in said petition described, or that defendants, or either of them, unlawfully withheld possession of said premises for any time whatever, or now unlawfully withhold the same, but admit that they were in possession of the same at the commencement of the suit, & said Rannells claims the same as owner thereof. They deny that plaintiff has any right to the possession of the same, or damages for its detention.

GLOVER & SHEPLEY,
For Def'd'ts.

And afterwards, at the October term, A. D. 1867, the following proceedings were had in said cause, to wit:

Trial begun.

FRIDAY, *November 15th*, 1867.

CHARLES J. CARPENTER, TRUSTEE FOR SARAH S. McCAMANT,
vs.
CHARLES S. RANNELLS, ROBERT M. RENICK, his guardian, and Robert Finn.

Now, at this day come said parties, by their respective attorneys, and waive a jury in this cause, and thereupon this cause, coming on to be heard, is tried by the court upon the pleadings, evidence, and proofs adduced; therefore the trial progressed, and is laid over for further proceedings.

And at the April term, A. D. 1868, the following further
4 proceedings were had in said cause, to wit:

Trial progressed.

FRIDAY, *May 8th*, 1868.

CHARLES J. CARPENTER, TRUSTEE FOR SARAH S. McCAMANT,
vs.
CHARLES S. RANNELLS, ROBERT M. RENICK, his guardian, & Robert Finn.

And now, again, at this day, come said parties, by their respective attorneys, and thereupon the trial of this cause progressed, and, not being fully terminated is continued until to-morrow.

Judgment.

TUESDAY, *May 12th*, 1868.

CHARLES J. CARPENTER, TRUSTEE FOR SARAH S. McCAMANT,
vs.
CHARLES S. RANNELLS, ROBERT M. RENICK, his guardian, & Robert Finn.

And now again, at this day, come said parties, by their respective attorneys, and the court being now fully advised of and concerning the premises in this cause, heretofore submitted to the court, doth, from the evidence and proofs, find the issues herein for the defendants.

It is therefore considered by the court that the plaintiff take nothing by his suit in this behalf, but that the defendants go hence without day, & recover of the plaintiff their costs and charges herein expended, & have execution therefor.

Motion for new trial overruled.

MONDAY, *May 25th*, 1868.

CHARLES J. CARPENTER, TRUSTEE OF SARAH S. McCAMANT,
vs.
CHARLES S. RANNELLS ET AL.

Now, at this day, the motion heretofore filed in this cause for a new trial, is submitted to the court, & the court being fully advised of and concerning the premises, doth order and adjudge that said motion be overruled.

5 And at the June term the following further proceedings were had, to wit:

Appeal allowed to general term.

SATURDAY, *June 6th*, 1868.

CHARLES J. CARPENTER, TRUSTEE OF SARAH S. McCAMANT,
vs.
CHARLES S. RANNELLS ET AL.

Now, at this day, there is filed in this cause a bill of exceptions, and thereupon, on motion of the plaintiff, by his attorney, it is by the court that an appeal to the general term be allowed him from the judgment herein rendered.

Bill of exceptions at special term.

Which bill of exceptions is in the words & figures following, to wit:

In the circuit court of St. Louis County.

CHARLES S. McCAMANT'S TRUSTEE
vs.
CHARLES S. RANNELLS & DEFENDANT'S GUARDIAN.

Be it remembered that, on the trial of this cause, the plaintiff gave the following evidence and testimony to the court sitting as a jury, which was read, as follows:

1st. Patent of the United States to John Butler, or his legal representatives.

2d. United States survey, No. 2852, by L. M. Eiler, recorded 13th June, 1834.

3d. Confirmation of New Madrid land to John Butler & his legal representatives.

4th. Translation of confirmation & papers, & lease of 1801.

5th. Transcript of Frederick Bates, recorder, of New Madrid location.

6th. Re-location of claim, Jan'y 7th, 1819, by Ashley, agent of Stokes, July 10th, 1819.

7th. Certificate of W'm Milburn that the parties did relinquish, & the relocation 23d April, 1832.

8th. Relinquishment of W'm Smith & wife to the United States.

9th. Relocation of the present land by W'm Smith & wife, 23d April, 1832, & record.

10th. Order of survey & survey, 10th Sept., 1833, by L. M. Eiler, surveyor.

11th. Act of Congress, March 21st, 1866, p. 12 of acts of 1865 & 1866.

12th. E. Hayward's letter of 6th Feb., 1833, to F. R. Conway, recorder.

13th. Abstract of patent certificates, issued Sept'r 2d, 1834. No. 414. No. of New Madrid certificate, 511.

14th. Power of attorney from heirs of John Butler to James McCamant, 18th March, 1852.

16th. Deed from James J. Butler & others to W. G. McCamant, of 15th January, 1856.

6 15th. Deed from Frederick C. Butler to Charles J. Carpenter, 15th November, 1865.

17th. W. G. McCamant to Charles J. Carpenter & W. G. McCamant, trustees of Sarah *F.* McCamant. Deed of 28th May, 1860.

Stipulation.

SARAH S. McCAMANT, BY HER TRUSTEES, Carpenter,
vs.
CHA'S S. RANNELLS.

In the above case it is agreed that the clerk, in making out the copy for the supreme court, need only copy the following original papers marked Nos. 3, 4, & 5, in the original bill of exceptions, as introduced by plaintiff, and that any other paper in the case may be referred to or used at the hearing of the supreme court, if either party wish it.

Papers to be copied.

No. 3. Confirmation of New Madrid land to John Butler, or his legal representatives.

No. 4. Translation of confirmation and paper and lease of 1801.

No. 5. Transcript of Bates, recorder of New Madrid location.

(No. 3 contains No. 5.)

Also papers introduced by defendant, marked in bill of exceptions as

No. 1, viz: deed of James Bankston to Holman Bankston, Sept'r 28, 1804.

HILL & JEWETT,
For Pl'tff.
GLOVER & SHEPLEY,
For Rannells.

Paper marked No. 3, which contains No. 5, is as follows, to wit:

Confirmation of New Madrid land to John Butler, and transcript of Bates, recorder of New Madrid location.

Claim, statement, and notice.

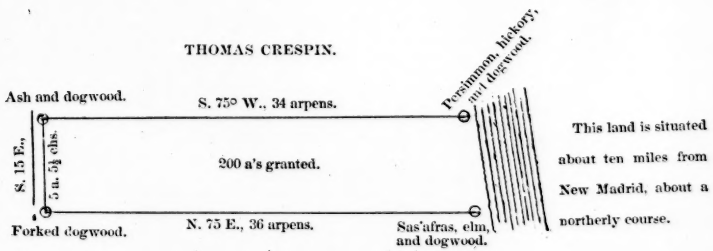
John Butler claims 200 arpens of land, situate in the district of New Madrid, under the 2d section of the act of Congress made and provided.

Order.

Mr. Story, arpenter a 200 a. deterre pour le S'r Jean Butler sur une fourche due Grand Bayou pres de la terre du Sieur Daniel Bingston. Donné a la Nouvelle, Madrid le 16th D'avril de l'anneé 1801.
(Signed) HENRY PEYROUX.

7 *Order.—Translation.*

Mr. Story will survey 200 a. of land for the S'r Jean Butler, on a fork of the Grand Bayou, near the land of S'r Daniel Bingston.
Given at New Madrid, the 16th of April of the year 1801.
(Signed) HENRY PEYROUX.



I do certify that the above plat represents 200 a. of land, French measure, situated in the district of New Madrid, Louisiana Territory, surveyed by me at the request of John Butler, who claims the same by virtue of a grant or permission of settlement from Captain Henry Peyroux, while commandant of the district of New Madrid aforesaid, and in virtue of the 2d section of the act of Congress respecting such claims, & past the 2d day of March last.
Given under my hand this 2d day of February, anno 1806.

JOSEPH STORY,
Deputy Surveyor, N. Mad. D't.

(See record-book A, page 396.)

8 Par devant nous, D'n Henry Peyroux de la Coudreniere, capitaine des armées de sa majesté *and* commandant civil & militaire des poste et district de Nouvelle-Madrid, fut présent s'r Jean Butler, habitant de ce poste; lequel a, par ces présentes, fait bail et donné à loyer pour trois années consécutives, qui commenceront à courir de ce jour, au s'r James Bingston, aussi habitant de ce poste, une plantation de deux cents arpens de terre, située au lieu dit la Prairie aux Broussailles, à cinq lieues de cette ville, tenant de pont au chemin des Illinois, et d'autre part au bayou St. Jean et aux terres du sieur Thomas Crespin, et du domaine de *la* majesté pour de la dite terre, en jouir en bon père de famille, et la faire valoir, pendant les dits trois ans, à son profit, *he* présent bail est fait aux charges clauses et conditions suivantes: 1°. Que le dit James Bingston s'oblige, pendant le cours des dites trois années, de faire sur la dite terre, tous les *improvements*, défrichements, et établissements, et ainsi que les chemins ce roy et autres travaux qui sont ordonnés par la loi pour pouvoir, au bout de trois années de la demande de la dite terre, en obtenir le titre de propriété de l'intendance de cette province; 2°. Moyennant le prix et somme de quarante piastres que le sieur John Butler reconnait avoir reçu du dit sieur James Bingston, et dont il le quitte, et décharge; 3°. Et enfin sous la condition que, si au bout des trois années du présent bail, le dit sieur Jean Bingston a fait, sur la dite plantation les *improvements*, défrichemen's, établissements & chemins du roy, ordonnés par la loi que la dite habitation lui appartiendra en toute propriété; et le dit Jean Butler s'oblige, lui, ses héritiers, et ayant cause d'en solliciter le titre de l'intendance, et de passer vente en forme de la dite terre au dit James Bingston, sans aucun autre *de Coursé* de sa part que le coût des actes qui seront pourvu nécessaires reconnaissants d'être rempli du prix de la dite terre par l'exécution complète des conditions exprimées au présent bail, et à ce faire était présent le sieur James Bingston qui a promis rempli' et exécuter toutes les dites clauses et conditions sous peine d'être privé des avantages qui en résultent en sa faveur. Fait et passé à la Nouvelle-Madrid, l'an mil huit cent-un, le ving'-trois
9 de juillet, étant témoins d'assistances D'n Pierre Antoine Laforge, remplissant les fonctions d'écrivain en ce poste, et D'n Joseph Charpentier, interprête pour le roy en la langue anglaise, et ont toutes les parties Signé.

marque
JEAN + BUTLER.
de
JAMES BANKSTON
JOSEPH CHARPENTIER.
PIERRE ANTOINE LAFORGE.

Pardevant nous, commandant de la Nouvelle-Madrid.
(Signed) HENRY PEYROUX.

TERRITORY OF LOUISIANA, *District of New Madrid:*
DECEMBER, 1805.

That the above is a true copy of the original in the records of said district is attested by—
ANDREW WILSON, *Recorder.*

See original on file.

FRIDAY, *April 12th*, 1811.

Board met. Present, John B. C. Lucas, Clement B. Penrose, and Frederick Bates, commissioners.

James Bankson, assignee of John Butler, claiming 200 arpen's of land, situate on Cypress Swamp, district of New Madrid, produced to the board an order of survey, dated 16th April, 1801, a certified copy of a conditional transfer from Butler to claimant, dated 23d July, 1801, a plat of survey, dated 2d February, 1806.

The board grant to John Butler or his legal representatives two hundred arpen's of land, and order that the same be surveyed as nearly in a square as may be, and so *and* to include his improvements.

Board adjourned till Monday next, nine o'clock a. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

See board minutes-book, No. 5, pages 145–148, & 149.

10 THURSDAY, *June 20th*, 1811.

Board met. Present, Clement B. Penrose, Frederick Bates, commissioners. John B. C. Lucas, commissioner, appeared at the board, and took his seat.

Cert. No. 1103, John Butler's legal representatives, book 5, page 148. Survey at expense of the United States.

Board adjourned till to-morrow, 8 o'clock a. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

See board minute-book, No. 5, page 187, 188, & 193.

Louisiana.—Commissioner's certificate, No. 1103, June 20th, 1811.

We, the undersigned, commissioners for ascertaining and adjusting the titles and claims to lands in the Territory of Louisiana, have decided that the legal representatives of John Butler, original claimant, are entitled to a patent under the provisions of the second section of an act of Congress of the United States, entitled An act for ascertaining and adjusting the titles and claims to land within the territory of Orleans and the district of Louisiana, passed the 2d day of March, one thousand eight hundred and five, for two hundred arpen's of land, situate in the district of New Madrid, cypress swamp, and order that the same be surveyed as nearly in a square as may be, and so as to include his improvements, by virtue of a permission from the proper Spanish officer, and also of actual inhabitation and cultivation prior to and on the 20th day of December, one thousand eight hundred and three.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

See certif'e on file.

Testimony as to lands in New Madrid damaged by earthquakes.

ST. LOUIS, *Oct'r* 19, 1815.

11 James Bankson, assignee of John Butler, comm'r cert. No. Cr. 200 arp's of land, cypress swamp. Comm'r's grant-book 5, page 148.

THOMAS BARTLETT, duly sworn, says that all the lands in the neighborhood of this claim were materially injured by earthquakes.

See book of testimony as to land in New Madrid, &c., pages 1 & 23.

A list of relinquishments of lands materially injured by earthquakes, in the late county of New Madrid, present State of Missouri, under act of Congress of 17th February, 1815.

No. cert.	Claimants of record.	Quantity.	Situation.	Relinquishment (by whom) and general remarks.
511	John Butler.....	200 arp's..	Cypress swamp.	Claimant.

Certificate of material injury by earthquakes in county of New Madrid.

No.	Names of claimants.	Quantity.	Situation.	Remarks.
511	John Butler.....	200 arp's..	Cypress swamp.....	Cert. Dec'r 31, 18 . Del'd James Evans.

A list of patent certificates prepared for issue by the recorder of land-titles, under the act of Congress of 17th February, 1815, & the supplementary acts for the relief of those inhabitants of the county of New Madrid who suffered by earthquakes.

Date.	No. P. C.	No. L. C.	Original claimants.	Quantity in acres.	To whom deliv'd.
1834 Sept. 2	414	511	John Butler, or his legal represent's.	170. 14	W'm Smith, St. Louis.

12

RECORDER'S OFFICE,
St. Louis, 26th March, 1858.

I certify that the foregoing is a complete & correct transcript from the books, records, plats, & files in this office, of the claim of John Butler, or his legal representatives, to two hundred arpents of land.

ADOLPH RENARD,
U. S. Recorder of land-titles in the State of Missouri.

The paper marked No. 4 is as follows, to wit:

Translation of confirmation & papers, and lease of 1801.

Before us, D'n Henry Peyroux de la coudreniere, captain of the army of his majesty and civil and military commander of the post and district of New Madrid, was present Mr. John Butler, an inhabitant of this post, who, by these presents leases for three years consecutively, to commence from this day, to Mr. James Bingston, also an inhabitant of this post, a plantation containing two hundred arpents of land, situated in the place called Prairie of Brousailles, five leagues from this town, having its front on the Illinois road, and other sides on the Bayou St. John and the lands of Mr. Thomas Crispin, and of the domain of her majesty, to enjoy the same as a good father of family, & to use the same during the said three years to his own advantage. The present lease is made subject to the following charges, stipulations, and conditions:

1st. That the said Mr. James Bingston obliges himself, during the course of said three years, to erect in said tract all the improvements & establishments, to break up the ground, and to make the royal road and

other improvements required by law, to be enabled, at the end of three years from the (demands) petition for said land, to obtain the title
13 of proprietorship from the government of the province.

2d. The sum of forty piasters, which Mr. John Butler acknowledges to have received of the said Mr. James Bingston, & of which payment he hereby acquits & discharges him.

3d. Finally, also on condition that if, at the end of the three years of this lease, the said James Bingston shall have made on the said plantation the improvements, the establishments, the breaking up of the ground, and the royal roads ordained by law, that the said habitation shall belong to him in full proprietorship, and the said John Butler obligates himself, his heirs, and assigns, to solicit the title of the government, & to make a regular transfer of said land to the said James Bingston, without any further cost on his part except the expenses of the necessary deeds acknowledging that the price for said land has been paid by the full execution of the conditions expressed in the present lease, and Mr. James Bangston, who was present, has promised to fulfill and execute all the said clauses & conditions under penalty of the forfeiture of the advantages which might result in his favor. Made and entered into at New Madrid, in the year eighteen hundred and one, the twenty-third of July. D'n Pierre Antoine Laforge being assistant witness, and acting as secretary at this post, & Don Joseph Charpenter being royal interpreter for the English language, and all the parties have signed.

Mark + of JEAN BUTLER.
J'H CHARPENTIER.
JAMES BANKSON.
PIERRE ANTOINE LAFORGE.

Before us, commander of New Madrid.

HENRI PEYROUX.

Woodford J. McCamant is admitted to have died before this suit.

Plaintiff thereupon read the deposition of James Evans as follows:

14 *Deposition of James Evans.*

JAMES EVANS, of lawful age, being sworn and examined on the part of the plaintiff, deposeth & saith:

1. Question by plaintiff. State your age & place of residence.

Answer. I am 77 years old. I reside in the city of Louisville, Kentucky.

2. By same. Did you, at any time, reside in the State of Missouri? If so, when, where, & how long?

Answer. I lived in Cape Girardeau County, State of Missouri, in the year 1807, and I remained there until the year 1824. I lived in the State until the year 1834.

By same. 3. Were you, at any time, acquainted with John Butler? If so, when, where, and how long did you know him?

Answer. I knew said Butler well; he lived in New Madrid County, when I first knew him in the year 1807 or 1808.

4. By same. Did said Butler, at any time, execute to you a power of attorney? If so, where is the original paper?

Answer. He did execute to me a power of attorney, which has been lost or destroyed by me long ago.

By same. 5. Have you made any search or examination for said

paper? If so, how diligently have you searched for it, & with what success?

Answer. I have often looked through my papers, and did so a short time ago, and I know the power of attorney was not with them, and I know it is lost or destroyed. I examined my papers yesterday, but I could not find the power of attorney.

6. By same. If you have a copy of said power of attorney, file it with your deposition.

I am confident the power of attorney, with my name written on the back of it, and with D. C. Woods' name written on the same, is a true copy of the original power of attorney executed to me by said John Butler, which I file, and make it part hereof.

By same. 7. Were you, at any time, acquainted with Henry Waddle? If so, when & where did you know him?

Answer. I did know said Waddle in 1864 up to his death; he lived in St. Louis, Missouri.

8. By same. What, if any, transaction did you have with him, and when and where?

15 Answer. I sold to said Waddle the tract of land set out and described in the deed made by me to said Waddle, which deed was duly acknowledged by me and recorded in the clerk's office in St. Louis, Missouri. A copy of the deed is now before me, and I make it a part of my deposition. It has my name written on the back of it.

By same. 9. Examine the writing now shown to you, marked (B), and state whether your transaction with said Henry Waddle had any connection with the subject-matter of this writing.

Answer. It had. It speaks for itself.

JAMES EVANS.

Power of attorney.

Know all men by these presents, that I, John Butler, of the county of New Madrid, and Territory of Missouri, have made, constituted, and appointed, and do by these presents make, constitute, and appoint, James Evans, of the county of Cape Girardeau, and Territory aforesaid, my true & lawful attorney for me and in my name to sell and dispose of a certificate of location for two hundred arpens of land, be the same more or less, obtained from the recorder of land titles for the Territory of Missouri, or to locate the same as my said attorney may think proper for the sole use and benefit of my said attorney for such price or sum of money, and to such person or persons as he shall think fit and convenient; and also for me and in my name to seal, execute, and deliver such deeds, conveyances, bargains, and sales for the absolute sale and disposal thereof or any part thereof as my said attorney shall think fit and expedient, hereby ratifying and confirming all and every matter or thing whatsoever my said attorney may or shall do in the premises as fully and is as ample as manner as I could do were I personally present myself.

In witness whereof I have hereunto set my hand & affixed my seal this 10th December, 1818.

JOHN BUTLER. [SEAL.]

16 Witness: CHARLES A. LAVABU.

Recorded February 9th, 1819,

A. GAMBLE, *Clerk.*

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder for said county, certify that the foregoing is a true copy of a power of attorney from J. Butler to J. Evans, and of the date of recording, as fully as the said remains of record in my office in book H, page 193.

Witness my hand and official seal this 27th day of March, 1858.

[SEAL.] C. KEEMLE, *Recorder.*

Deed to Henry Waddle.

Know all men by these presents, that I, James Evans, attorney in fact of John Butler, duly hereunto authorized, as appears by the annexed letter of attorney, for and in consideration of the sum of five hundred & sixteen dollars to me in hand paid by Henry Waddle, of the town & county of St. Louis, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and assigned, and do by these presents grant, bargain, sell, & assign unto the said Henry Waddle, his heirs and assigns forever, a certain New Madrid certificate, issued by Frederick Bates, recorder of land titles for the Territory of Missouri, No. 511, dated St. Louis, December the 31st, 1818, whereby it is certified, among other things, that the said John Butler or his legal representatives is entitled to locate two hundred arpens of land on any of the public lands of the Territory of Missouri, the sale of which is authorized by law; and I, the said James Evans, by virtue of the aforesaid letter of attorney, do transfer and assign to the said Henry Waddle all the right, title, & privileges of the said John Butler into & by virtue of the aforesaid certificate to & for the two hundred arpens aforesaid;

17 and I, the said James Evans, for myself personally, my heirs, executors, and administrators, do hereby covenant, promise, and agree to and with the said Henry Waddle that I have full power & authority to sell to him the said certificate in manner and form aforesaid, and that the same shall entitle him to locate and hold the quantity of land therein mentioned, and in case the title to the said certificate should fail or prove ineffectual to the purposes aforesaid, then I, the said James Evans, bind myself to refund to the said Henry Waddle the aforesaid sum of five hundred and sixteen dollars with lawful interest thereon from the time the same is paid to the time of repayment.

In testimony whereof the said James Evans, for himself and as attorney in fact for the said John Butler, has hereunto set his hand and affixed his seal the first day of January, one thousand eight hundred and nineteen.

JAMES EVANS. [SEAL.]

Signed and delivered in presence of—
F. M. GUYOL.

TERRITORY OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on the first day of January, one thousand eight hundred and nineteen, before me, Francis M. Guyol, one of the justices of the peace in & for the county aforesaid, personally appeared James Evans, who acknowledged this foregoing instrument of writing to be his act, deed, hand, & seal, for the purposes therein contained.

In testimony whereof I have hereunto set my hand and affixed my seal on the date in this behalf before written.

F. M. GUYOL, *J. P.* [L. S.]

Recorded February 9th, 1819.

A. GAMBLE, *Clerk.*

STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder in & for the county of St. Louis, certify the foregoing to be a full and true copy of a deed from John Butler by attorney to H'y Waddle of the certificate of acknowledgment of the date of recording thereof as fully as the same remains of record in my office in book H, pages 192 & 193.

18 Witness my hand & official seal the 25th day of January, 1856.

[SEAL.] C. KEEMLE, *Recorder.*

By JA'S DOUGHERTY, *D'p't.*

Plaintiffs gave evidence tending to prove that the grantors named in deeds numbered above 15 & 16 were heirs of John Butler.

1st. Defendant read in evidence a deed from James Bankston to Holman Bankston of the 28th September, 1804. (See forward, page 19.)

19 *Deed from James Bankston to Holman Bankston.*

Par devant nous Pierre Antoine Laforge, commandant civil des poste et district de Nouvelle-Madrid, et soussigné fut present le s'r James Benkston, habitant de ce poste, lequel à par ces presentes, vendu, cédé, et transporté et promis faire jouir et faire valoir au s'r Holman Benk'ton, son fils à ce present et acceptant pour lui ses héritiers et ayant cause une plantation de deux cent arpens situées en ce district à environ douze milles de cette ville au lieu dit la Prairie des Halliers, au vieux chemin des Illinois, faisant pont au bayou St. Jean, et tenant d'un côté à une terre au dit s'r James Benks'on, accordée au s'r Thomas Crispin, et d'autre côté à une autre appartenante au s'r Daniel Benks'on, sur laquelle terre presentement vendu ont été faits divers defrichements et ainsi que le tout s'r poursuit et comporte sans en rien réserver n'y excepter, et que le dit s'r Holeman Benks'on a dit bien connaître et en être satisfait, et pour lui, en jour faire et disposer en toute propriété et jouissance, à partir de ce jourd'hui la présente vente est faite moyennant le prix et somme de cent piastres que le dit s'r James Benks'on a reconnu avoir reçu du s'r Holman Binks'on, son fils, à sa satisfaction et dont il le quitte et décharge. La terre présentement vendue appartenant au s'r James Binks'on comme l'ayant acquise du s'r John Butler, de ce poste auquel elle avait été accordée par Mr. Henry Peyroux, lors command't de ce poste, et pour obtenir les titres de laquelle terre le dit Jno. Butler a présenté sa requête à Mr. l'intendant espagnol de cette province, le quinze juillet mil huit cent un, ainsi qu'il résulte du régistre d'entrées de terre accordées, et pétitionné en étant entre nos mains. Fait et passé en la Nouvelle-Madrid, l'an mil huit cent quatre, le vingt-huit septembe*r*, étant témoins d'assistance, Mr. Joseph Charpentier, de ce poste, et le s'r Pierre François Laforge, aussi de ce poste, et on' signé après que le présente a été interprété aux parties par le s'r Joseph Charpentier.

(Signed) JAMES BANKS'ON.
HOL*E*MAN BANKS'ON.
JOSEPH CHARPENTIER.
PIERRE ANTOINE LAFORGE,
Com'and't Civil.

TERRITORY OF LOUISIANA, *District of New Madrid, ss:*

11TH DECEMBER, 1805.

That the above is a true copy of the original in the records of said district is attested by—

ANDREW WILSON,
Recorder.

(Endorsement:) Record-book E, p. 289. Copy. Sale by James Banks on to Holman Banks'on. 28 Sept., 1804. 200 arp's. Brush Prairie. Holman Bankson. Robert Louis Watson.

OFFICE OF THE U. S. RECORDER OF LAND-TITLES,
St. Louis, January 13th, 1864.

I hereby certify that the foregoing is a correct copy of a document, with its endorsement, on file in this office, and found in a bundle marked B, No. 1.

THOMAS S. NELSON,
U. S. Recorder of Land-Titles.
By G. HOOFSTETTER, *Clerk.*

Translation of deed.

Translation of the document in the French language.

Before me, the subscriber, Pierre Antoine Lafarge, civil commandant of the post and district of New Madrid, was present Mr. James Bankson, resident of this post, who, by these presents, has sold, ceded, and conveyed, and promised to procure the enjoyment & profits to Mr. Holman Bankson, his son, here present and accepting, for himself, his heirs and representatives, a plantation, containing 200 arpen's, situated in this district, at about 12 miles from this town, in a place called the Brushy prairie, on the old Illinois road, fronting on the Bayou St. John, and bounded on one side by a tract of land of said Mr. James Bankson granted to Mr. Thomas Crispin, and on the other side by another
21 tract belonging to Mr. Daniel Benkson, on which land, now sold, were made sundry clearings, and such as the whole is found to exist, without reserving or accepting anything; and that the said Mr. Holeman Bankson has acknowledged to well know and be satisfied of it, and to let him enjoy the same, and dispose of it in full property & enjoyment from this day. The present sale was made in consideration of the price and sum of one hundred dollars, which the said Mr. James Binkson acknowledge' to have received from Mr. Holeman Binkson, his son, to his satisfaction, and of which he acquits and discharges him. The land, now sold, belonged to Mr. James Binkson, he having acquired it from Mr. John Butler, of this post, to whom it was granted by Mr. Henry Peyroux, then commandant of this post, and to obtain the titles to that land, the said John Butler has presented his petition to the Spanish official l'intendant of this province, on the 15th July, 1801, & according to the register of lands granted & petitioned for which is in our possession.

Done and executed at New Madrid, in the year 1804, the 28th September, the assisting witnesses being Mr. Joseph Charpentier, of this post, and Mr. Pierre Francis Laforge, also of this post, having signed

after these presents had been read and translated to the parties by Mr. Joseph Charpentier.

(Signed) JAMES BANKSON.
HOLEMAN BANKSON.
JOSEPH CHARPENTIER.
PIERRE ANTOINE LAFORGE,
Civil Commandant.

ST. LOUIS, *January 13th*, 1864.

Truly translated.

G. HOOFSTETTER, *Clerk.*

2d. A deed from John B. Carson & wife to A. H. Evans, as follows:

3d. Deed A. H. Evans & wife to Charles S. Rannells, 11th June, 1853.

4th. Thomas S. Wanson & others to Charles S. Rannells. Deed, December 1st, 1859.

(See stipulation, page 6.)

The foregoing was all the evidence & proceedings in the case, and plaintiff asked the following instructions:

Plaintiff's instructions—Refused.

1. The court is requested to declare the law to be that, upon the record evidence put into the case as to the proceedings before the board for the confirmation of land titles, the confirmation did not enure to
22 the benefit of James Bankson or his legal representatives.
Refused.

C. B. LORD.

2. The confirmation in this case is to John Butler and his legal representatives, and to no other person.
Refused.

C. B. LORD.

3. The act of Congress, approved the 21st of March, 1866, makes the location in this case valid, if the location is valid in all other respects than that it was made or located after the expiration of the time specified by law for making said location; and the patent of the United States to John Butler & his legal representatives read in evidence in this case is conclusive proof of the validity of said New Madrid location upon the lands described in the patent.
Refused.

C. B. LORD.

4. The lease of 1801 from John Butler to James Bankson is not evidence of any transfer of title to James Bankson beyond the leasehold-interest of three years, and, in order to raise an equity in Bankson or his legal representatives to claim a conveyance from Butler or his legal representatives of this land, it is necessary for Bankson or his legal representatives to prove that James Bankson did perform the conditions of said lease so as to entitle him to a conveyance of the title of John Butler or his legal representatives.
Refused.

C. B. LORD.

And the court refused to give them and each of them, & plaintiff excepted then & there.

Defendant asked the following instructions, which the court gave as follows:

Defendant's instructions—Given.

1. The defendants move the court to decide the law to be that the legal effect of the proceedings before the board of commissioners for the adjustment of land-titles in 1811 read in evidence by the plaintiff is to confirm the land therein mentioned to James Bankson, assignee of John Butler, the assignment by Butler to Bankson having been filed as part of the claim of said Bankson.

Given.

C. B. LORD.

2. The defendant moves the court to decide the law to be that, if it has been shown by the evidence to the satisfaction of the court that, prior to the 12th day of February, 1815, said Butler transferred to James Bankson his interest in the land in lieu of which New-
23 Madrid certificate No. 511, read in evidence, issued, then said certificate did not enure to the benefit of said John Butler or his heirs, nor vest any title in either of them.

Given.

C. B. LORD.

To the giving of the foregoing instructions plaintiff excepted.

The court, sitting as a jury, then & there entered a judgment for the defendant.

The plaintiff thereupon, in due time, filed a motion for a new trial as follows:

Motion for new trial.

Circuit court St. Louis County, April T., 1868.

CHARLES J. CARPENTER, TRUSTEE OF S. McCAmant,
vs.
CHARLES S. RANNELLS.

The plaintiff comes and moves the court to set aside the jud'ment and verdict rendered for the defendant in the above-entitled cause, & to grant the pl't'ff a new trial, for the following reasons:

1st. Because the court rejected proper evidence offered by the pl't'ff.

2d. Because the court refused proper instructions offered by the pl't'ff.

3d. Because the court admitted illegal evidence offered by def't, & objected to by pl't'ff.

4th. Because the court gave illegal & improper instructions for the defendant.

5th. Because the finding or verdict of the court, sitting as a jury, is against the evidence and the weight of evidence.

6th. Because said finding is without evidence to support it.

7th. Because the judgment should have been for the pl't'ff instead of for the def't.

HILL & JEWETT,
Att'ys for Pl'ff.

The court overruled the motion, & plaintiff excepted, & asks the court to sign this bill of exceptions, to be made a part of record, as witness my hand & seal as judge of this court.

C. B. LORD, *Judge.* [SEAL.]

And, afterwards, at a general of said court, A. D. 1868, the following further proceedings were had in said cause, to wit:

SATURDAY, *June 20th*, 1868.

24 *Judgment at special term affirmed.*

CHARLES J. CARPENTER, TRUSTEE FOR SARAH S. McCAMANT,
vs.
CHARLES S. RANNELLS, ROBERT M. RENICK, his guardian, & THOMAS FINN.

Now come the parties by their respective attorneys; and the court being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment herein rendered by the court at special term be, and the same is hereby, in all things affirmed, and that the defendants recover of the plaintiff the costs of this proceeding, and that execution issue therefor.

Appeal allowed to supreme court.

CHARLES J. CARPENTER, TRUSTEE FOR SARAH S. McCAMANT,
vs.
CHARLES S. RANNELLS ET AL.

Now comes the plaintiff, by his attorney, and files an affidavit for an appeal; and on his motion an appeal is allowed him to the supreme court, from the judgment herein rendered.

Which affidavit for appeal is as follows, to wit:

Affidavit for appeal.

C. court St. Louis Co., June t., 1868. General term.

SARAH S. McCAMANT,
by C. J. Carpenter, her trustee.

And now D. T. Jewett, agent & attorney for the pl't'ff, on oath says, that the appeal from the decision of the court, at general term, in the above case, is not taken for vexation or delay, but because he believes that the plaintiff is aggrieved and wronged by the judgment & decision of the court.

D. T. JEWETT, *Att'y.*

Sworn to and subscribed before me.

J. LEWIS, *Cl'k.*

JUNE 20TH, '68.

And on the 24th day of June, A. D. 1868, a bill of exceptions was filed as follows, to wit:

Bill of exceptions at general term.

Circuit court St. Louis Co. General term, June, 1868.

SARAH S. MCCAMANT, BY C. J. CARPENTER, her trustee,
vs.
CHARLES S. RANNELLS.

25 Be it remembered that, on the trial of this case before the general term, the pl't'ff, appellant, provided all the original documents & papers, and all evidence introduced at the trial before the special term, and the bill of exceptions taken at the special term, embodying the same; and, after hearing the parties, the court then affirmed the judgment of the special term, to which judgment and decision of the general term the plaintiff then & there excepted, and prays that all the evidence and proceedings in the case may be made a part of the record, & his exceptions allowed; which is accordingly done.

SAM'L REBER, *Pr. Judge.*

Certificate.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, John Lewis, clerk of the circuit court within & for the county of St. Louis, hereby certify the foregoing to be a true, full, and complete transcript of the record & proceedings had in the case of Carpenter, &c., vs. Rannells et al., as fully as the same remain on file in my office.

In testimony whereof I hereto set my hand & affix the seal of said court, at office, in the city of St. Louis, this 28th day of July, A. D. 1868.

[SEAL.] JNO. LEWIS, *Clerk.*

26 *Copies of papers recited in the stipulation, (page 6.)*

1st. THE PATENT.

The United States of America, to all to whom these presents shall come, greeting:

Whereas there has been deposited in the General Land-Office a certificate numbered four hundred & fourteen, of the recorder of land titles, at St. Louis, Missouri, whereby it appears that in pursuance of the act of Congress approved on the seventeenth day of February, one thousand eight hundred and fifteen, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes," and the several acts of Congress amendatory and explanatory of the same, there has been located for John Butler, or his legal representatives, a tract of land containing one hundred and seventy acres, and fourteen hundredths of an acre, bounded and described as follows, to wit:

Beginning at the northeasterly corner of Francis Cottar's eight hundred-arpen' tract, number one thousand nine hundred & forty-seven,

established by L. M. Eiler, deputy surveyor, (the old bearing-trees being cut down, but the stumps, with visible marks, standing,) by setting a post for the corner, from which a black-oak five inches in diameter bears north fifty-one degrees west, distant fifty-one & a half links, and a post-oak twelve inches in diameter bears north ten degrees east, distant one hundred & seventeen links; thence south six degrees and twenty-eight minutes west, with Francis Cottar's east boundary twenty-two chains and forty-four links to a post, old corner of fractional sections seventeen and twenty, from which a black-jack nine inches in diameter bears north fifty-nine degrees east, distant ninety links; thence south seven degrees west, with Cottar's east boundary line, at twelve chains & forty links; a branch, ten links wide, runs west, at fifteen chains and eighty links; a branch, ten links wide, runs west forty chains & seventy links to a post in Cottar's east boundary, set by L. M. Eiler, deputy surveyor, from which a hickory four inches in diameter bear north fifty-three degrees east, distant twenty-eight links, and a hickory, six inches in diameter, bears south forty degrees west, distant eighty-two links; thence east at nine chains and forty-nine links, a branch
27 ten links wide runs southwest; at sixteen chains and thirty-four links a black-oak twelve inches in diameter, (at twenty-seven chains and ninety-nine links there is a road bearing southwest;) at twenty-two chains and sixty-nine links a branch ten links wide runs southwest twenty-three chains and ninety-nine links to a post set by L. M. Eiler, deputy surveyor, (southeasterly corner of John Butler's survey,) from which a post-oak, nine inches in diameter, bears south two degrees west, distant fifty and a half links, and a black-jack, two inches in diameter, bears north sixty-six degrees west, distant sixty-six links; thence north sixty links to a road bearing east and west ten chains & sixty links to a road bearing northwest and southeast; twelve chains and thirty links to a road bearing east & west; at twenty-five chains, a branch, six links wide, runs southeast; here a conjunction of two branches, one fork bearing northwest, one other bearing southwest, at thirty-nine chains and fifty links, a branch, twelve links wide, runs nearly east forty chains and thirty-three links to a post set by L. M. Eiler, deputy surveyor, from which a white-oak, three inches in diameter, bears south sixty-one degrees west, distant eighty-eight links, and a black-oak, two inches in diameter, bears south eight degrees east, distant thirty-eight links; thence north eighty-nine degrees and thirty-seven minutes east, one chain & sixty-four links to a post set by L. M. Eiler, deputy surveyor, from which a pin-oak, twelve inches in diameter, bears south seventy-six degrees west, distant fifty links, & a black-oak, four inches in diameter, bears north sixty-one degrees and thirty minutes west, distant fifty-nine links; (this corner is eighteen chains & thirty-six links south, eighty-nine degrees & thirty-seven minutes west of the corner of sections sixteen, seventeen, twenty, & twenty-one, in township forty-five north, of range six east of the principal meridian;) thence north nine minutes west, at seventeen chains and eighty-one links, a post-oak, three inches in diameter; at thirty-eight chains and fifty links, a branch, six links wide, runs northeast forty chains & thirty links to a post, the northeast corner of this survey, from which post a post-oak, five inches in diameter, bears south twenty-eight degrees east, distant seventy-six links, and a post-oak, three inches in diameter, bears south fifty-two degrees west, distant one hundred and twenty-seven links; thence south eighty-nine degrees and twenty-two minutes west, sixteen chains and thirty-nine links to a road bearing southeast and northwest twenty-two chains and nineteen links to a post set by L. M. Eiler,

deputy surveyor, being the center corner of the section, and northwest corner of John Butler's survey, from which post a post-oak, ten inches in diameter, bears south nine degrees east, distant one hundred and eighty-three links, and a post-oak, twelve inches in diameter, 28 bears north forty-one degrees west, distant one hundred & forty links, & a black-jack, three inches in diameter, bears north forty-eight degrees east, distant sixty-two links, & a post-oak, twelve inches in diameter, bears south eighty-eight degrees and thirty minutes west, distant one hundred and twenty-two links; thence south at four chains and forty links, a branch, six links wide, runs southwest seventeen chains & twenty-five links to a post set by L. M. Eiler, deputy surveyor, on the northerly boundary-line of Francis Cottar's eight-hundred arpen' tract, (number one thousand nine hundred and forty-seven,) from which post a post-oak, sixteen inches in diameter, bears north fifty-one degrees & thirty minutes east, distant seventy-two links, and a black-jack, ten inches in diameter, bears south eighteen degrees east, distant ninety-seven links; thence south eighty-three degrees east, four chains and nineteen links to the point of begin'ing, being township forty-five north, of range six east of the fifth principal meridian-line, and being survey numbered two thousand eight hundred & fifty-two, in the State of Missouri. There is therefore granted by the United States, unto the said John Butler, or his legal representatives, and to his or their heirs, the tract of land above described: To have and to hold the said tract, with the appurtenances, unto the said John Butler or his legal representatives, and to his or their heirs & assigns, forever.

In testimony whereof I, Abraham Lincoln, President of the United States, have caused these letters to be made patent, and the seal of the General Land-Office to be hereunto affixed.

Given under my hand, at the city of Washington, the thirtieth day March, in the year of our Lord one thousand eight [SEAL.] hundred and sixty-three, and of the Independence of the United States the eighty-seventh.

By the President:

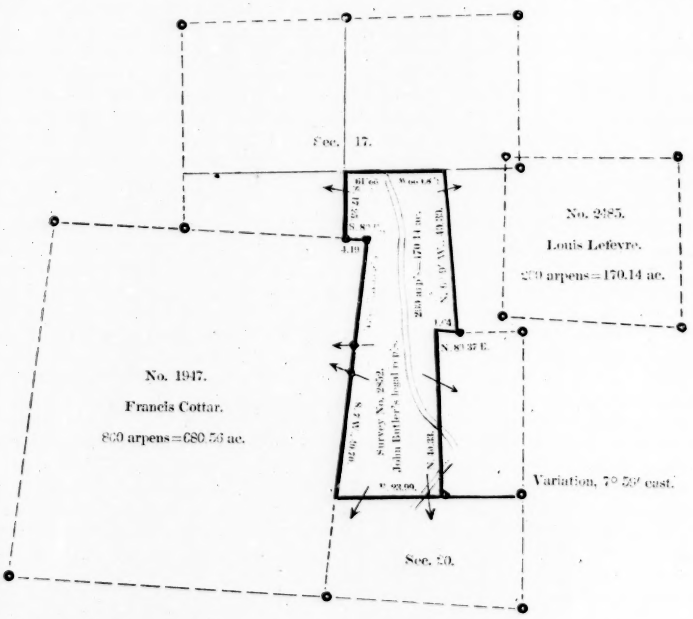
ABRAHAM LINCOLN,
By W. O. STODDART, *Sec'y.*
MARTIN BUELL,
Acting Recorder of the General Land-Office, ad interim.

Recorded vol. 11, pages 493 to 496. Ex'd.

29 No. 2.—STIPULATION.

T. 45. N., R. 6 E.

Survey No. 2852.] [Certificate No. 511.



Plat and description of a survey of 170.14 acres, equal to 200 arpen's of land, executed by me on the 13th & 14th September, 1833, in pursuance of an order from Elias T. Langham, surveyor of public lands in Illinois and Missouri, dated 10th September, 1833, authorizing me to survey 200 arpen's of land for John Butler, or his legal representatives, in conformity with the notice of entry of William Smith and wife, dated 12th of April, 1833, as the legal owners of certificate No. 511 of new location, issued on the 31st of December, 1818, under the act of Congress of 17th of February, 1815, for the relief of persons whose lands were injured by earthquakes in Missouri, authorizing John Butler, or his legal representatives, to locate 200 arpen's of land on any of the public lands of the Territory of Missouri, the sale of which is authorized by law, and in virtue of the act of Congress, approved on the second of March, 1831, entitled "An act for the relief of holders of certificates issued in lieu of lands injured by earthquakes in Missouri:" Beginning at the northeast corner of Francis Cottar's 800-arpen's tract No. 1947, which is re-established by me (the old bearing-trees being cut down, but the stumps, with visible marks, standing) by setting a post for the corner, from which a black-oak, 5 inches diameter, bears N. 51 W. 51½ links,

and a post-oak, 12 inches diameter, bears N. 10 E. 117 links; thence S. 6° 28′ W. with Francis Cottar's east boundary 22 chains 44 links to a post, old corner of fractional sections 17 & 20, from which a black-jack, 9 inches diameter, bears N. 39 E. 90 links; thence S. 7 W. with Cottar's east boundary-line 12 chains 40 links to a branch 10 links wide; runs west 15 chains & 80 links to a branch 10 links wide; runs west 40 chains & 70 links to a post in Cottar's east boundary, set by me, 30 from which a hickory, 4 inches diameter, bears N. 53 E. 28 links, and a hickory, 6 inches diameter, bears S. 40 W. 82 links; thence east 9 chains & 49 links, a branch, 10 links wide, runs S. W. 16 chains & 34 links to a black-oak, 12 inches diameter, 21 chains 99 links, a road bears S. W. 22 chains 69 links to a branch, 10 links wide, runs S. W. 23 chains & 99 links to a post set by me, (southeasterly corner of John Butler's survey,) from which a post-oak, 9 inches diameter, bears S. 2 W. 50½ links, & a black-jack, 2 inches diameter, bears N. 66 W. 66 links; thence north 60 links to a road bearing E. & W., 10 chains & 60 links to a road, bears N. W. & S. E., 12 chains & 30 links to a road, bears E. & W. 25 chains, a branch, 6 links wide, runs S. E.—here is a conjunction of 2 branches, one fork bearing N. W., and the other bears S. W. 39 chains & 50 links to a branch, 12 links wide, runs nearly east 40 chains & 33 links to a post set by me, from which a white-oak, 3 inches diameter, bears S. 61 W. 88 links, & a black-oak, 2 inches diameter, bears S. 8, E. 38 links; thence north 89° 37′ E., 1 chain and 64 links to a post set by me, from which post a pin-oak, 12 inches diameter, bears S. 76 W. 50 links, & a black-oak, 4 inches diameter, bears N. 61½ W., 59 links, (this corner is 18 chains & 36 links S. 89° 37′ W. of the corner of sections 16, 17, 20, & 21, T. 45 N., R. 6 E. 5th p'l mer'd.;) thence N. 0° 9′ W., 17 chains & 81 links to a post-oak, 3 inches diameter, 38 chains & 50 links a branch, 6 links wide, runs N. E. 40 chains & 30 links to a post, northeast corner of this survey, from which post a post-oak, 5 inches diameter, bears S. 28 E. 76 links, & a post-oak, 3 inches diameter, bears S. 52 W., 127 links; thence S. 89° 22′ W., 16 ch's & 39 links to a road bears S. E. & N. W. 22 chains & 19 links to a post set by me, being the center corner of the section and N. W. corner of John Butler's survey, from which a post-oak, 10 inches diameter, bears S. 9 E. 183 links, & a post-oak, 12 inches diameter, bears N. 41 W. 140 links, & a black-jack, 3 inches diameter, bears N. 48 E. 62 links, and a post-oak, 12 inches diameter, bears S. 88½ W. 122 links; thence S. 4 chains & 40 links to a branch, 6 links wide, runs S. W. 17 chains & 25 links to a post set by me in the northerly boundary-line of Francis Cottar's 800-arpen's tract No. 1947, from which post a post-oak, 16 inches diameter, bears N. 51 E. 72 l'ks, and a black-jack, 10 inches diameter, bears S. 18 E. 97 links; thence S. 83 E. 4 chains & 19 links to the point of beginning.

L. M. EILER,
Deputy Surveyor.

JUNE 13TH, 1834.

Recorded June 13th, 1834.

31 OFFICE OF THE SURVEYOR-GENERAL
FOR ILLINOIS & MISSOURI,
Saint Louis, June 12th, 1857.

The foregoing plat & description of survey No. 2852 are correctly copied from pages 144 & 145 of record book A, on file in this office.

JNO. LOUGHBOROUGH,
Surveyor-General.

32 No. 511.] John Butler. [200 arpen's.

OFFICE OF THE RECORDER OF LAND TITLES,
S't Louis, Dec. 31st, 1818.

I certify that a tract of two hundred arpens of land, Cypress Swamp, county of New Madrid, which appears from the books of this office to be owned by John Butler, has been materially injured by earthquakes, and that in conformity to the provisions of the act of Congress of 17th February, 1815, the said John Butler, or his legal representatives, is entitled to locate two hundred arpen's of land, on any of the public lands of the Territory of Missouri, the sale of which is authorized by law.

(Signed) FREDERICK BATES.

Min. com'r 5, p. 148.

Endorsements.

I, James Evans, attorney in fact for John Butler, do hereby transfer and assign all my right and claim to the within and unto Henry Waddle.

S't Louis, the 1st day of January, 1819.

(Signed) JAMES EVANS.

Witness—
N. H. MOORE.

For value received, I assign one half my of the within certificate to Thomas W. Thurston, 2d January, 1819.

(Signed) HENRY WADDLE.

Test: GEO. W. FERGUSON.

Withdrawn in consequence of interference with right of pre-emption.

Richard R. Venables and John Heath as the legal representatives of John Butler, enter two hundred arpen's of land, by virtue of certificate No. 511, dated S't Louis, Dec'r 31st, 1818, and issued to John Butler or his legal representatives, in the following manner, to wit: So as to include fractional section No. 23, and as much off from the south side of that
33 part of fractional section No. 14, which is not appropriated by the claim of Jacob Bogard, as will include the quantity of two hundred arpen's of land, all situate in township No. 49, north of the base line, range No. 18, west of the 5th principal meridian, and on the north side of the Missouri River.

(Signed) RICHARD R. VENABLES,
For JNO. HEATH.
RICHARD R. VENABLES.

S'T LOUIS, *Jan'y 7th*, 1819.

Surveyor of the lands of the U. States for the Territories of Illinois & Missouri:

SIR: Take notice that in pursuance of the act of Congress of 17th February, 1815, respecting lands in the county of New Madrid injured by earthquakes, and in virtue of a certificate issued in conformity to said act, by Frederick Bates, recorder of land titles for the Missouri Territory, which said certificate is numbered five hundred and eleven, and dated at S't Louis, Dec'r 31st, 1818, and herewith shown to you, William

Stokes, by his agent, William H. Ashley, does hereby enter & locate, as the legal representative of John Butler, two hundred arpen's of land (mentioned in said certificate) in the following manner, to wit: So as to include the northeast quarter of section No. 30, in township No. 49 north, in range No. 17, west of the 5th principal meridian in the Territory of Missouri.

(Signed) W'M H. ASHLEY,
Agent for W'm Stokes.

S'T LOUIS, *July 10th*, 1819.

34 Endorsement.

SURVEYOR'S OFFICE, S'T LOUIS.

The land embraced by the within location, viz: the N. E. q'r of section 30, T. 49 N., R. 17 W., having been adjudged as a right of pre-emption, William Smith and wife, heirs of William Stokes, relinquished their right thereto on the 23d of April, 1832, under the act of Congress of the 2d of March, 1831, and on the same day (23d April, 1832) relocated the same in T. 45 N., R. 6 E.

(Signed) WILLIAM MILBURN, *Clerk.*

Register's certificate, (copy.)

LAND OFFICE, FRANKLIN, MISSO', *Sept. 12th*, 1831.

SIR: In answer to your enquiry of the 2d inst., I now inform you that the N. E. q'r of sec. No. 30, town' No. 49, (north Missouri River,) range No. 17, was granted to Ezekial Williams as a pre-emption right, as appears from the records remaining on file in this office.

(Signed) H. L. BOON, *Register.*

To Mr. WILLIAM SMITH, *S't Louis.*

Relinquishment of Smith & wife, (copy.)

Whereas William Stokes, by his agent William H. Ashley, did, on the 10th of July, 1819, locate the northeast quarter of section No. 30, in township No. 49 north, range 17 west of the 5th principal meridian under certificate of new location No. 511, issued to John Butler or his legal representatives for 200 arpen's, on the 31st day of December, 1818, under the act of 17th February, 1815, for the relief of persons whose lands were injured by earthquakes in Missouri, as will appear by the original location, and the certificate of new location on file in the United States surveyor's office at S't Louis, and of which the foregoing
35 and within are correct copies; and whereas the aforesaid north-east quarter of section 30, of township 49 north, range 17 west, "has been adjudged as a right of pre-emption," as will appear by the accompanying certificate of the United States register of the land-office for the district in which said land lies; and whereas we, William Smith and Anna Smith, (formerly Ann Stokes,) his wife, heirs, and legal representatives of the aforesaid William Stokes, (who has deceased,) and "legal owners" of the aforesaid certificate (No. 511) of new location, wish to avail ourselves of the benefit of the act of Congress approved on the 2d of March, 1831, entitled "An act for the relief of certain holders of certificates issued in lieu of land injured by earthquakes in Missouri:" Now, therefore, be it known, that we, the aforesaid William Smith & Ann Smith, for & in consideration of the privileges & benefits granted

to us as legal owners of the aforesaid certificate No. 511, by the aforesaid act of Congress approved 2d March, 1831, do hereby relinquish, make over, transfer, & forever quit-claim to the United States, all our right, title, & interest in and to the aforesaid northeast quarter of section 30, in township 49 north, range 17 west of the 5th principal meridian.

In witness whereof we have hereunto set our hands and seals this 23d day of April, 1832.

(Signed) WM SMITH. [SEAL.]
(Signed) ANN SMITH. [SEAL.]

STATE OF MISSOURI:

Be it known that on the day of the date hereof, personally appeared before the undersigned, a justice of the peace within & for
36 the county of S't Louis, William Smith & Ann Smith his wife, who are personally known to said justice to be the persons whose names are subscribed to the instrument of writing on the other side, and acknowledged said instrument of writing to be their act and deed for the purposes therein mentioned; and the said Ann, the wife of the said William Smith, being by the justice aforesaid, made acquainted with the contents of the said deed, and examined separately & apart from her said husband, made her acknowledgment that she granted the same, & relinquished her dower to the premises therein described voluntarily & freely, without the compulsion or undue influence of her said husband.

Given under my hand this 23d day of April, 1832.

(Signed) J. V. GARNIER, *J. P.*

To the surveyor of the lands of the U. States in Illinois, Missouri, & Arkansas:

SIR: Take notice, that, as the legal owners of certificate No. 511, of new location issued on the 31st of December, 1818, (under the act of Congress of the 17th of February, 1815, for the relief of persons whose lands were injured by earthquakes in Missouri,) authorizing John Butler or his legal representatives to locate 200 arpen's of land on any of the public lands of the Territory of Missouri, the sale of which is authorized by law, and having this day, as appears by the foregoing instrument of writing, complied with the requisitions of the act of Congress approved on the 2d March, 1831, entitled "An act for the relief of certain holders of certificates, issued in lieu of lands injured by earthquakes in Missouri," by relinquishing to the U. States all claims to the N. E. quarter of sec. 30, in township 49 north, in range 17 west of the
5 principal meridian, and land previously located by virtue of
37 the aforesaid certificate of new location, five hundred and eleven, and which has been adjudged as a right of pre-emption—we hereby locate the west half of the north fractional half of sec. 20, and so much off the west side of the S. E. frac'l quarter of sec. 17, of T. 45 N., R. 6 E. of the 5 principal meridian, as will make 200 arpens of land, & request that the same may be surveyed as soon as practicable.

(Signed) WM SMITH,
For himself & wife.

S'T LOUIS, *April 23d*, 1832.

SURVEYOR'S OFFICE,
S't Louis, 23d of April, 1832.

Received the foregoing and within relinquishment & location this

23d April, 1832, subject to the decision of Col. McRee (who is absent) on his return.

WILLIAM MILBURN, *Chief Clerk.*

SURVEYOR'S OFFICE,
S't Louis, 10 *Sept.*, 1833.

SIR: You are hereby authorized to survey 200 arpen's of land for John Butler or his legal representatives, in conformity with the notice of entry enclosed herewith and dated 23d of April, 1832, for which you will be paid by the claimants, to whom you must look for your compensation. You are so well acquainted with the business that further instructions are deemed unnecessary, except to state, that unless your surveys are approved they will not be received.

I am, very respectfully, your obed't servant,
(Signed) E. T. LANGHAM.

To L. M. EILER, *D. S.*

38

RECORDER'S OFFICE,
S't Louis, Mo, 15 *May*, 1843.

SIR: I herewith send you a copy of a letter from the General Land-Office, dated 6 February, 1835, relating to the New Madrid claim of 200 arpen's of land in the name of John Butler—certificate ot new location No. 511; you will be pleased to furnish this office with the evidence asked by the Com'r, in order that it may be transmitted to him as early as practicable.

I am, very respectfully, sir, your obed't servant,
(Signed) F. R. CONWAY,
U. S. Recorder of Land Titles in the State of Mo.

SILAS REED, Esq.,
U. S. Surveyor of public lands for Illinois & Missouri, S't Louis.

GENERAL LAND-OFFICE, 6 *February*, 1835.

SIR: The Hon. William H. Ashley has deposited in this office New Madrid Patent Certificate 414, issued by you on the 2d of September last, in favor of John Butler for 200 arpen's, in T. 45 N., range 6 east, and which is therein stated to have been issued under the provisions of the act of the 2d March, 1831, for the relief of certain holders of Madrid certificates. This act authorizes the holders of those New Madrid certificates which had been located upon lands claimed under the pre-emption acts, to locate their certificates upon other lands, provided "that previous to making such new location, the legal owners aforesaid shall relinquish to the U. States all claim to the previous location"—and by the 2d section of that act the law was to remain in force but 18 months. This certificate has not been patented, because, by the plat of survey which accompanied it, it appears that the notice of the new entry is dated on the "12th April, 1833," or more
39 than seven months after the provisions of the act ceased by its own limitation, and also because there was no evidence that the relinquishment required by the act had been executed. I will, therefore, thank you to procure from the surveyor-general, & forward to this office, a copy of the order of location upon which the survey was made, & in case the relinquishment required by the act was executed,

it must be transmitted, with the evidence necessary to show the title held by the parties who executed the same.

An early attention to this subject is requested.

I am, very respectfully, your obed't servant,

ELIJAH HAYWARD.

F. R. CONWAY, Esq.,
Recorder, S't Louis, Missouri.

OFFICE OF THE U. S. RECORDER OF LAND TITLES,
S't Louis, April 27th, 1872.

This is to certify that the foregoing is a correct copy of New Madrid certificate No. 511, in the name of John Butler, together with the accompanying papers, as the same appear in a book marked "Record II, New Madrid certificates and locations, No. 251 to 516," which book is up to this day preserved on file in this office.

STILLMAN O. FISH, *Recorder.*

40 *No.* 11 *of stipulation.*

An act quieting doubts in relation to the validity of certain locations of lands in the State of Missouri made by virtue of the certificates issued under the act of Congress of February the seventeenth, eighteen hundred and fifteen.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all locations of lands in the State of Missouri purporting to have been made by virtue of certificates issued under the act of Congress approved February seventeenth, eighteen hundred and fifteen, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes," which are invalid in consequence of having been made or located after the expiration of the time specified by law for making said locations, shall be, and the same are hereby declared to be, as valid and as binding as if the said locations had been made and fully completed within the time prescribed by law, provided said locations shall be according to law in all other respects; but the foregoing provisions of this section shall not apply to, comprehend, include, or extend to any land within township forty-five north of the base-line, in range seven, east of the fifth principal meridian line in said State of Missouri.

SEC. 2. *And be it further enacted*, That the United States do hereby grant, relinquish, and convey in fee simple and in full property, to James Y. O'Carroll, or his legal representatives, all of the right, title, and interest of the United States in & to all of the land within survey number two thousand four hundred and ninety-eight, in township forty-five north of the base-line, in range seven east of the fifth principal meridian line, in the State of Missouri, being the same land that was lo-
41 cated by virtue of certificate number one hundred & fifty, issued to the said James Y. O'Carroll, or his legal representatives, under the act of Congress approved February the seventeenth, eighteen hundred and fifteen, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes:" Provided, however, that nothing in this section shall grant, relinquish, or convey the whole or any part of any lot, tract,

piece, or parcel of land, in said township, which has been heretofore confirmed by the United States to any person or persons, or to the legal representatives of any person or persons: And provided further, that nothing in this act shall be so construed as to invalidate or impair any patent heretofore issued by the United States, or shall in any manner abridge, divest, impair, injure, or prejudice any valid, adverse right, title, or interest of any person or persons in or to any portion or part of the aforesaid land which is granted, relinquished, and conveyed by his act.

Approved March 21, 1866.

42 *No. 13 of stipulation.—Abstract from the registry of patent certificates issued on surveys of New Madrid locations.*

Date of patent certificate.	No. of patent certificate.	No. of location certificate.	To whom issued.	No. of survey.	Area in acres.	Delivery of patent certificate.
1834. Sept. 2	414	511	John Butler, or his legal rep's.....		170. 14	W'm Smith, (S't Louis.)

OFFICE OF THE RECORDER OF LAND TITLES,
S't Louis, 2d December, 1859.

I certify that the above is correctly abstracted from the list of patent certificates issued on New Madrid claims on file in this office.

ADOLPH RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

No. 14 *of stipulation.*

Know all men by these presents that we, the undersigned heirs and legal representatives of John Butler, deceased, all of the county of New Madrid, & State of Missouri, have this day made, constituted, and appointed, & do by these presents make, constitute and appoint, James McCamant, of the city & county of St. Louis, and State of Missouri, our true & lawful attorney for us, and in our names, and for the joint use of ourselves and of him, the said James McCamant, to ask, demand, sue for, recover, and take possession of, in our names, the following described tracts of land, to wit: one hundred & seventy (170) acres of land, located under and by virtue of New Madrid certificate of relocation No. five hundred & eleven, (511,) issued in the name of John Butler, situated in township forty-nine (49) north, range seventeen (17) west; also, one other tract of land, containing one hundred and sixty acres, (160,) located under and by virtue of New Madrid certificate of relocation No. five, (5,) issued in the name of John B. Perron, or his legal representatives, in lieu of lot No. two hundred and seven, (207,) in the town of New Madrid, located in township fifty-seven (57) north, range five (5) west; also all the lands that may have been located in lieu of lots No.'s one hundred and eighty-four, (184,) and two hundred and nine, (209,) the first having been granted by the Spanish government to Hypolite Tirart, alias S't Jean, and confirmed to the said Tirart, and the last one having been granted by the Spanish government to

Louis Tirart, alias S't Jean, and confirmed to said Louis Tirart, be the said lands located or situated in either of the following counties, (namely:) Cape Girardeau, S't Louis, S't Charles, Lincoln, Pike, Ralls, *Luris*, Marion, Montgomery, Calaway, Cole, Boone, Cooper, Howard, Chariton, Carroll, Ray, Clay, Jackson, Lafayette, & Saline, or any county in the State, wherever our said attorney
44 may find said lands located; also any other lands that our said attorney may find belonging to us, or to which we can lawfully claim, as heirs and legal representatives aforesaid, be the same situated in either of the above-named counties, or any other part of the State of Missouri, saving & excepting at all times, all such lands, houses, lots and real estate, as we are in possession of, hereby authorizing & *im*powering our said attorney to settle all or any of said claims by compromise if he shall see fit, and to bring & to institute all such suit or suits, & institute all such other proceedings of every kind as to our said attorney may seem fit and necessary or expedient for the recovery of the said lands or real estate, or any part thereof, or any right, title, or interest which we have, or can lawfully claim in or to the same; also to bargain, sell, convey and transfer all or any of said lands or real estate, on such terms, and for such sum or sums of money, or other valuable considerations as to our said attorney shall seem fit and most expedient for our interest; and upon any such sale or compromise being made, to sign, seal and deliver in our names, and as our representative, all such deed *or* deeds of conveyance, or other instruments of writing as to our said attorney shall seem necessary for the conveyance of all or any of the said lands or real estate aforesaid, or any right, title, or interest that we may have to the same, and to receive all such sum or sums of money, or other valuable considerations, as may or shall be due or coming to us from any such sale or compromise, and full acquittances and discharges in our names to give; hereby ratifying and confirming all acts which our said attorney may or shall lawfully do in the premises by virtue hereof; and in consideration of the services of our said attorney rendered & to be rendered about the premises, as well as for the sum of ten dollars to us in hand paid before the sealing & delivery
45 hereof, the receipt of which is hereby acknowledged, we have [*granted, bargained,] sold, remised, released, and forever quit-claimed, and by these presents do [*grant, bargain,] sell, remise, release, and forever quit-claim unto him the said James McCamant, his heirs or assigns, the one equal, undivided half part or moiety of all the above-described lands, or real estates, and also the one equal half part of any and all other lands that he the said McCamant may or shall find belonging to us, or to which we can or may lawfully have title as heirs and legal representatives aforesaid; also the one equal half part or moiety of all sums of money, or other valuable considerations which shall or may be coming to us from any sale or compromise that may be made of all or any of the above lands: To have & to hold the same unto him, the said James McCamant, his heirs or assigns, for their own proper use & behoof forever, with this express understanding and agreement that all lawsuits *is* to be brought at the cost & expense of the said James McCamant, and all other costs and expenses of every kind and nature *is* to be paid by the said James McCamant.

In testimony whereof we the said heirs and legal representatives of

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* Erased in original.

the said John Butler have hereunto set our hands and seals this eighteenth day March, A. D. 1852.

JA'S J. BUTZ.	[SEAL.]
RICH'D BARKLEY.	[SEAL.]
HARRIET E. BARKLEY.	[SEAL.]
JOHN RANSBURGH.	[SEAL.]
NANCY RANSBURGH.	[SEAL.]
UPTON C. BUTLER.	[SEAL.]
ADELINE M. BUTLER.	[SEAL.]
JAMES J. BUTLER, JR.	[SEAL.]
JOHN W. BUTLER.	[SEAL.]
COLOMBE M. BUTLER.	[SEAL.]
	[SEAL.]
	[SEAL.]
	[SEAL.]
	[SEAL.]

Signed, sealed, and delivered in the presence of—

46 STATE OF MISSOURI, *New Madrid County, ss:*

Be it remembered that on this 23d day of March, one thousand eight hundred and fifty-two, before me, William S. Moseley, clerk of the circuit court within & for the said county of New Madrid, State aforesaid, personally appeared Richard Barkley, and Harriet E. Barkley, his wife; John Ransburg', and Nancy Ransburg', his wife; Upton C. Butler, Adeline M. Butler, and James J. Butler, jr., to me personally known to be the persons whose names are subscribed to the foregoing power of attorney, as parties thereto, and acknowledged that they executed the same for the purposes therein mentioned; and the said Harriet E. Barkley and Nancy Ransburg', being by me examined apart from their said husbands, & made fully acquainted with the contents of the said power of attorney, acknowledged that they executed the same freely and without fear, compulsion, or undue influence of their said husbands.

In testimony whereof I, William S. Moseley, clerk of the circuit court of New Madrid, in said State of Missouri, have hereunto signed my name, and affixed the seal of said court, at office in New Madrid, in said county, this 23d day of March, in the year of our Lord one thousand eight hundred & fifty-two.

[SEAL.] W'M S. MOSELEY, *Clerk C. C.*

STATE OF MISSOURI, *County of New Madrid, ss:*

Be it remembered that on this 25th day of March, one thousand
47 eight hundred and fifty-two, before me, Richard Barkley, clerk of the county court within and for said county of New Madrid, State aforesaid, personally appeared James J. Butler, sr., John W. Butler, and Colombe M. Butler, his wife, to me personally known to be the persons whose names are subscribed to the foregoing power-of-attorney as parties thereto, and acknowledged that they executed the same for the purposes therein mentioned; and the said Colombe M. Butler, being by me examined apart from her said husband, and made fully acquainted with the contents of the said power of attorney, acknowledged that she executed the same freely and without fear, compulsion, or undue influence of her said husband, and that the erasures made in the thirteenth & fif-

teenth lines from the top of third page in foregoing power of attorney were made before signing of the same.

In testimony whereof I, Richard Barkley, clerk of the county court of New Madrid County, in the State of Missouri, have hereunto signed my name and affixed the seal of said court, at office in New Madrid, in said county, this 25th day of March, in the year of our Lord eighteen hundred and fifty-two.

RICHARD BARKLEY, *Clerk*,
By JOHN T. SCOTT, *Deputy Clerk*.

STATE OF MISSOURI, *County of Marion, ss:*

IN THE RECORDER'S OFFICE.

This instrument of writing was filed for record in said office on the 1st of November, 1852, and, with the certificate thereon, is duly re-
48 corded in said office, in deed-book T, as pages 93, 94, 95, & 96.

Given under my hand and official seal, at Palmyra, this 2d November, 1852.

[SEAL.] THOMAS E. THOMPSON, *Recorder*,
By his deputy, WINFIELD S. MEANS.

STATE OF MISSOURI, *County of St. Louis.*

I, the undersigned, recorder for said county, certify that the foregoing deed was filed for record in my office January 21st, 1856, and is truly recorded in book 171, page 50.

Witness my hand and official seal the date aforesaid.

[SEAL.] C. KEEMLE, *Recorder*.

[The following is the endorsement on said instrument.]

Heirs of John Butler.—Power of attorney to James McCamant. Filed for record on the 1st November, 1852. Tho's E. Thompson, recorder. Recorded in deed-book T, at pages 93, 94, 95, & 96. Filed Jan'y 21st, 1856. C. Keemle, recorder. 171, 50, (23,) 2.25, paid, (paid.)

No. 15 of stipulation.

This deed made on the fifteenth day of November, eighteen hundred and sixty-five, by and between Frederick C. Butler, of the county of New Madrid, Missouri, party of the first part, and Charles J. Carpenter, trustee of Sarah S. McCamant, of the county of St. Louis, &
49 State of Missouri, party of the second part, witnesseth, that the said party of the first part, in consideration of fifty dollars to him paid by the said party of the second part, the receipt of which is hereby acknowledged, do, by these presents remise, release, and forever quit-claim unto the said party of the second part all my right, title, interest, and claim in and to the following described tract, piece, or parcel of land, to wit: One hundred and seventy and fourteen 170 $\frac{14}{100}$ acres, or two hundred arpents located in township forty-five, (45,) north, in range six, (6,) east, in St. Louis County, under & by virtue of New Madrid certificate of relocation No. 511, issued in the name of John Butler, or his legal representatives; it being United States survey twenty-eight hundred and fifty-two, (2852:) To have & to hold the same with all the rights, immunities, privileges, & appurtenances thereunto belonging, unto the said party of the second part, & their heirs and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand & seal the day & year first above written.

Signed, sealed, and acknowledged in presence of the undersigned,—

F. C. BUTLER. [SEAL.]

[Internal revenue stamp, fifty cents.]

STATE OF MISSOURI, *county of St. Louis, ss:*

Be it remembered, that on this eighth day of December, eighteen hundred & sixty-five, before me, the undersigned, a notary public in & for the county & State aforesaid, came Frederick C. Butler, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, and he acknowledged the same to be his act and deed for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my notarial seal the day & year last above written.

[SEAL.] JOSEPH L. PAPIN,

Notary Public for St. Louis County, Mo.

50 STATE OF MISSOURI, *County of St. Louis, ss:*

I, the undersigned, recorder for St. Louis county, do hereby certify that this foregoing deed was filed on the 11th December, 1865, and is duly recorded in book 311, page 200.

Witness my hand and official seal the date aforesaid.

[SEAL.] JULIUS CONRAD, *Recorder.*

(Endorsed:) Quit-claim deed. Fred'k C. Butler to Sarah S. McCamant as trustee. 311, 200. Filed Dec. 11, 1865. Julius Conrad, recorder, 6 p.

No. 16 *of stipulation.*

This deed, made and entered into this fifteenth day of January, in the year of our Lord one thousand eight hundred & fifty-six, by and between James J. Butler, Richard Barkley and Harriet E. Barkley, his wife, John Ransburg and Nancy Ransburg, his wife, Upton C. Butler, Adaline M. Butler, James J. Butler, jr., Jones W. Butler and Colombe M. Butler, his wife, all of the county of New Madrid and State of Missouri, heirs and legal representatives of John Butler, deceased, formerly of said county of New Madrid, Missouri, through & by there attorney in fact, James McCamant, who is of the city and county of St. Louis, parties of the first part, and William G. McCamant, of the city and county of St. Louis & State of Missouri, party of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of three hundred dollars lawful money of the United States to our said attorney in hand paid, the receipt of which is hereby acknowledged by the said James McCamant, attorney in fact as aforesaid to have received in full of the said William G. McCamant,

51 the party of the second part; we, the said parties of the first part have this day sold, remised, released and forever quit-claimed and do by these presents sell, remise, release, and forever quit-claim unto him, the said William G. McCamant, his heirs & assigns, the following-described tract, piece or parcel of land, (to wit:) two hundred arpents, more or less, in township forty-five, (45,) north, range six, (6,) east, located under and by virtue of New Madrid certificate of relocation number five hundred & eleven, (511,) issued in the name of John Betler,

or his legal representatives; it being United States survey number (2852:) To have and to hold unto him the said William G. McCamant, the party of the second part, his heirs and assigns forever, the above-described tract of land, together with all the improvements and appurtenances thereunto belonging.

In testimony whereof we, the said James J. Butler, Richard Barkley and Harriet E. Barkley, John Ransburg, and Nancy Ransburg, Upton C. Butler, Adaline M. Butler, James J. Butler, jr., John W. Butler & Colombe M. Butler, the parties of the first part, have hereunto set their hands and seals the day & year first above written.

JAMES. J. BUTLER, [SEAL.]
RICHARD BARKLEY, [SEAL.]
HARRIET E. BARKLEY, [SEAL.]
JOHN RANSBURG, [SEAL.]
NANCY RANSBURG, [SEAL.]
UPTON C. BUTLER, [SEAL.]
ADALINE M. BUTLER, [SEAL.]
JAMES J. BUTLER, JR., [SEAL.]
JOHN W. BUTLER, [SEAL.]
COLOMBE M. BUTLER, [SEAL.]
By their attorney in fact, JAMES McCAMANT, [SEAL.]

Signed, sealed, and delivered in the presints of—
J. THORNBURG.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that on this 18th day January, 1856, before the undersigned, clerk of the St. Louis county court, came James McCamant, who is personally known to me to be the same person whose
52 name is subscribed to the foregoing instrument of writing as attorney in fact for James J. Butler, Richard Barkley, Harriet E. Barkley, John Ransburg, Nancy Ransburg, Upton C. Butler, Adaline M. Butler, James J. Butler, jr., John W. Butler, and Colombe M. Butler, parties hereto, and he acknowledged the same to be the act and deed of the said James J. Butler, Richard Barkley, Harriet E. Barkley, John Ransburg, Nancy Ransburg, Upton C. Butler, Adaline M. Butler, James J. Butler, jr., John W. Butler, and Colombe M. Butler, done by and through him, said McCamant, as attorney as aforesaid, for the purposes therein mentioned.

In witness whereof I hereto set my hand and affix the seal of said court at office in St. Louis the date last aforesaid.

[SEAL.] JOSIAH THORNBURG.

Filed and recorded Jan'y 21st, 1856. C. Keemle, recorder.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify the foregoing to be a true & complete copy of an instrument of writing from James J. Butler, Richard Barklay, Harriet E. Barklay, John Ransburg, Nancy Ransburg, Upton C. Butler, Adaline M. Butler, James J. Butler, jr., John W. Butler, & Colombe M. Butler, to William G. McCamant, and of the certificate of acknowledgment, and of the date of filing & re-

cording thereof, as fully as the same remains of record in my office, in book 172, pages 14 & 15.

Witness my hand and official seal this the 27th day of April, 1866.

[SEAL.] JULIUS CONRAD,
Recorder.

[5-cent stamp, canceled.]

(Endorsed:) James J. Butler et al. to William G. McCamant.

53 *No. 17 of stipulation.*

This deed of trust, made and entered into this twenty-eighth day of May, one thousand eight hundred and sixty, by and between William G. McCamant, of the city & county of St. Louis and State of Missouri, party of the first part, and Charles J. Carpenter and Woodford W. McCamant, of the county of St. Louis and State of Missouri, parties of the second part; and Sarah S. McCamant, wife of James McCamant, of the same city, county, and State, party of the third part, witnesseth: That the said party of the first part, for and in consideration of the sum of ten dollars, to him in hand paid by the said parties of the second part, the receipt of which is hereby acknowledged, and of the love and affection that he bears toward his mother, the said Sarah S. McCamant, hath granted, bargained, and sold, and does by these presents grant, bargain, & sell unto the said parties of the second part the following-described real-estate & property, to wit: a tract of land containing two hundred (200) arpents, located in township forty-five (45) north, range six (6) east, in the county of St. Louis and State of Missouri, under and by virtue of New Madrid certificate of relocation number five hundred & eleven, (511,) issued in the name of John Butler or his legal representatives, it being United States survey 2852; to have & to hold the same unto the said parties of the second part, or the survivor of them, in trust, however, for the sole use of the said Sarah S. McCamant, the party of the third part, free from any control or interference from the said James McCamant, the husband of the Sarah S. McCamant, the party of the third part; and on the written request of the said Sarah S. McCamant being made to the said parties of the second part, they, the said Charles J. Carpenter and Woodford W. McCamant, the said parties of the second part, are to grant, bargain, & sell the within & foregoing-described property for such price or sum or sums
54 of money, or other valuable consideration as she, the said Sarah S. McCamant may order and direct, and to make, execute, sign, seal, and deliver all such deed or deeds, or other instruments in writing as may be wanting and necessary to convey the title to said tract of land, or any part thereof; and in case of the death of the said Sarah S. McCamant, then & in that event the said parties of the second part are to convey said tract of land, with all the appurtenances thereunto belonging, to James McCamant, the husband of the said Sarah S. McCamant, the party of the third part.

In witness whereof the said parties have hereunto set their hands & seals the day & year first above written.

W. G. McCAMANT. [SEAL.]
C. J. CARPENTER. [SEAL.]
W. W. McCAMANT. [SEAL.]
SARAH S. McCAMANT. [SEAL.]

Signed, sealed, and delivered in presence of—

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that, on this seventh day of June, A. D. eighteen hundred and sixty, before me the undersigned, a notary public within & for the county & State aforesaid, came William G. McCamant, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto, and he acknowledged the same to be his act & deed, for the uses & purposes therein mentioned.

Witness my hand & notarial seal the date last aforesaid.

[SEAL.] JOHN GRETHER, JR.,
Notary Public.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office Feb. 15, 1861, and is truly recorded in book 258, p. 28. Witness my hand and official seal the date aforesaid.

[SEAL.] A. C. BERNOUDY,
Recorder.

(Endorsed:) W'm G. McCamant to Sarah S McCamant's trustee. Deed. 258–28. Filed Feb'y 15, 1861. A. C. Bernoudy, recorder.

55 *Respondent's evidence—(as per stipulation.)*

See pages 6 and 21. No. 1 is copied on page 19.

No. 2 of stipulation on part of def'ts.

This deed, made and entered into this tenth day of June, eighteen hundred and fifty-three, by and between John B. Carson and Ann his wife, parties of the first part, and Augustus H. Evans, the party of the second part, all of St. Louis County, State of Missouri, witnesseth: Whereas the said Ann Carton, [Carson ?] formerly Ann Smith, did, on or about the first day of February, 1836, together with her then husband, William Smith, convey*ed*, by deed of that date, to the said Augustus H. Evans, the following-described lands, lying and being in the county of St. Louis and State of Missouri, to wit: the west half of the north fractional half of section twenty, (20,) and as much off the west side of the southeast fractional quarter of section seventeen (17) as will make two hundred arpents, township 45 north, of ran'e 6 east of the 5th principal meridian, and more particularly described as United States survey number 2852, under New Madrid certificate number 511; and whereas the said conveyance is supposed to be defective on account of an informality in the acknowledgment thereof, now, therefore, in consideration of said supposed defective conveyance, and for the purpose of curing the same, & in consideration of the sum of one dollar to to the said John B. Carson and the said Ann Carson paid, the receipt of which is hereby acknowledged, the said John B. Carson and the said Ann Carson, wife of the said John B., do by these presents transfer and assign, remise, release, and forever quit-claim unto the said Augustus H. Evans, his heirs & assigns, the said tract of land above described: To have & to hold the same, with all the rights, immunities,

privileges, and appurtenances to the same belonging, to the said
56 Augustus H. Evans and to his heirs and assigns forever.
Witness our hands & seals the day & year first above-written.

JOHN B. CARSON. [SEAL.]
ANN CARSON. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss :

Be it remembered that, on this tenth day of June, A. D. 1853, before the undersigned, clerk of the St. Louis county court, came John B. Carson and Ann Carson his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act & deed for the purposes therein mentioned; she, the said Ann Carson, being by me first made acquainted with the contents of said conveyance, acknowledged, on an examination apart from her husband, that she executed the same freely & without compulsion or under influence of her said husband.

In testimony whereof I hereto set my hand and affix the seal of said court at office in St. Louis, the date last aforesaid.

[SEAL.] LEWIS F. LACY, *Clk*,
By J. THORNBURGH, *D. C.*

STATE OF MISSOURI,
County of St. Louis, ss :

I, the undersigned, recorder in & for said county, certify that the foregoing instrument of writing was filed for record in my office, June 20. 1853, and is truly recorded in book U, No. 6, page 55.

Witness my hand & official seal the date aforesaid.

[SEAL.] S. D. BARLOW,
Recorder.

(Endorsed.) Sec's 17 & 20, T. 45 N., R. 6 E. of 5 p. m. John B. Carson & wife to Augustus H. Evans. Filed June 20, 1853. S. D. Barlow, recorder. U, 6, p. 55. 80 due C. S. Rannells.

57 *No. 3 of stipulation on part of def'ts.*

This deed, made on the eleventh day of June, eighteen hundred & fifty-three, by & between Augustus H. Evans, of the county of St. Louis, State of Missouri, party of the first part, and Charles S. Rannells, of the same county & State, party of the second part, witnesseth, that the said party of the first part, in consideration of one thousand dollars to him paid by the said party of the second part, the receipt of which is hereby acknowledged, doth by these presents sell & convey, & remise, release, & forever quit-claim unto the said party of the second part, all his right, title, & interest in and to a certain tract of land, lying & being in St. Louis County, State of Missouri, being the west half of the north fractional half of section twenty, (20,) and as much of the west side of the southeast fractional quarter of section seventeen (17) as will make two hundred arpents, township forty-five (45) north of range six (6) east of the fifth principal meridian, and more particularly described as United States survey number 2852, under New Madrid certificate number 511. To have & to hold the same, with all the rights, immunities, privileges, & appurtenances thereunto

belonging, unto the said party of the second part, and to his heirs & assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal the day & year first above written.

A. H. EVANS. [SEAL.]

Signed, sealed, and acknowledged in presence of the undersigned. In the tenth line from top on first page, the words "sell and convey" interlined before signing and sealing.

S. M. BRECKINRIDGE.

58 STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this twentieth day of June, eighteen hundred and fifty-three, before me, the undersigned, a notary public duly commissioned and qualified in and for the county and State aforesaid, came Augustus H. Evans, who is personally known to the undersigned to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto, and he acknowledged the same to be his act & deed for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my notorial seal, at office, this twentieth day of June, A. D. eighteen hundred and fifty-three.

[SEAL.]

S. M. BRECKINRIDGE,
Notary Public, St. Louis County.

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office June 20, 1853, and is duly recorded in book V, 6, p. 6.

Witness my hand & official seal the date aforesaid.

[SEAL.]

S. D. BARLOW,
Recorder.

(Endorsed.) Sec's 17 & 20, T. 45 N., R. 6 E., 5 p. m. Augustus H. Evans to Charles S. Rannells. Filed June 20th, 1853. S. D. Barlow, recorder, (Book V6, p. 6.) 85 due.

59 *No. 4 of stipulation on part of defendants.*

This deed, made this first day of December, 1859, between Thomas A. Winsor, Eliza J. Winsor, Elisha F. Winsor, Sarah S. Winsor, Green Stamper, and Eadie Stamper, (late Winsor,) his wife, of the first part, and Charles S. Rannells, of the county of St. Louis, of the other part, witnesseth, that said parties of the first part, in consideration of two hundred and fifty dollars to them paid by said Rannells, the receipt of which they hereby acknowledge, have bargained, sold, and quit-claimed, and by this deed do bargain, sell, & quit-claim, and convey unto said Charles S. Rannells all their right, title, and interest, claim, and estate in and to that certain tract of land in the county of St. Louis, State of Missouri, situate in township 49 N., R. 6 E., being United States survey number two thousand eight hundred and fifty-two, (2852,) under New Madrid certificate of new location number 511, to John Butler, or his legal representatives, containing two hundred arpents, said tract of land being now

in possession of said Rannells: The above parties of the first part being the only heirs & legal representatives of Elisha Winsor and Eadie Winsor, wife of said Elisha, who was, before marriage, Eadie Bankson, daughter of James Bankson: To have and to hold the said tract of land to him & to his heirs forever.

In witness whereof said parties of the first part have hereto set their hands and seals the day and year aforesaid.

THO'S A. WINSOR. [SEAL.]
ELISHA J. WINSOR. [SEAL.]
his
ELISHA F. + WINSOR. [SEAL.]
mark
her
SARAH S. + WINSOR. [SEAL.]
mark.
[SEAL.]
[SEAL.]

STATE OF MISSOURI, *County of Cooper:*

I, Benjamin Thompkins, clerk of the circuit court in & for said county, do certify that on this the 28th day of December, A. D. 1859, came before me, Thomas E. Winsor, Eliza J. Winsor, Elisha F. Winsor, and Sarah S. Winsor, who are personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as party thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned.

In witness whereof I have hereunto set my hand & affixed the seal of said court at office the day & year above written.

[SEAL.] BENJ. F. THOMPKINS, *Clk*,
By JUST. WILLIAMS, *D. C.*

60 STATE OF MSSIOURI, *County of St. Louis, ss:*

I, the undersigned, recorder for the county, certify that the foregoing deed was filed for record in my office, Feb'y 21, 1860, and is truly recorded in book 237, p. 261.

Witness my hand and official seal the date aforesaid.

[SEAL.] C. KEEMLE, *Recorder.*

(Endorsed) Tho' A. Winsor & others to C. S. Rannells, 237, 261. Filed Feb'y 21, 1860. C. Keemle, recorder. 4 pd.

61 And afterwards, to wit, at the October term of the supreme court of the State of Missouri, A. D. 1868, the following proceedings were had in said cause, to wit:

TUESDAY, *October 27th*, 1868.

Assignment of errors filed.

Which assignment of errors is in the words & figures following, to wit:

CHARLES J. CARPENTER, TRUSTEE OF SARAH S. McCAMANT, appellant. *vs.* CHARLES S. RANNELLS, RESPONDENT. } In Supreme Court. Term 18—.

And now comes the said appellant, and say', that in the record and proceedings of the court below, in the above-entitled cause, there is

manifest error, and for said error said appellant assigns the following, to wit:

1. That said court admitted improper & illegal testimony offered by respondent.
2. That said court rejected proper and legal testimony offered by appellant.
3. That the court gave to the jury improper and illegal instructions.
4. That the court refused to give to the jury proper & legal instructions offered by appellant.
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law & evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the respondent, when it should have been rendered for the appellant.

That said court overruled the motion for a new trial made by appellant.

HILL & JEWETT,
For Appellant.

And afterwards, to wit, at the March term, A. D. 1869, of said
62 court, the following further proceeding were had in said cause, to wit:

Cause submitted.

CHARLES J. CARPENTER, TRUSTEE, &c., APPELLANT.
vs.
CHARLES S. RANNELLS ET AL., RESPONDENTS.

Now again come the parties aforesaid, by their attorneys, and, after argument herein, submit this cause to the court.

Appellant's and respondent's briefs filed.

And afterwards, to wit, at the October term, A. D. 1869, of said court, the following further proceedings were had in said cause, to wit:

Judgment affirmed.

MONDAY, *October 25th*, 1869.

CHARLES J. CARPENTER, TRUSTEE, &C., APPELLANT,
vs.
CHARLES S. RANNELLS, ROBERT M. RENNICK, his guardian, and Thomas Finn, resp't.
Appeal from St. Louis circuit court.

Now again come the parties aforesaid, by their respective attorneys, and the court bieng now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said St. Louis circuit court be in all things affirmed, and stand in full force and effect; and that the said respondent recover of the said appellant his costs and charges herein expended, and have execution therefor.

Opinion filed.

Which said opinion is in the words & figures following, to wit:

Opinion.

In the supreme court. October term, 1869.

C. J. CARPENTER ET AL., APP'T, } Opinion of the court.
vs.
C. S. RANNELLS ET AL. RESP'T }

63 This is an ejectment suit, for two hundred arpents of land in township 45, St. Louis County, located under New Madrid certificate of relocation, No. 511. This certificate was issued under the act of Congress of February 17th, 1815, & supplementary acts, in lieu of lands in New Madrid County which had been injured by earthquakes. The plaintiffs seek to deduce title to the premises in suit through John Butler, who acquired an interest in the New Madrid lands in virtue of a Spanish permission of settlement granted April 16, 1801. This inception of title is conceded. The defendants, however, contend that Butler, July 23, 1801, by a conditional sale, conveyed his inchoate title to James Bankson, and that Bankson, under the act of Congress of March 2, 1805, filed his claim to the lands with the United States land commissioners, as also his evidence of derivative title, and procured a confirmation of the same to himself. The plaintiffs admit the conditional sale, but insist that there is no evidence that the stipulated conditions were complied with; and claim that Butler in fact made the claim, which was filed with the land commissioners, and secured a confirmation for his own benefit. The effect to be given to the proceedings of the land-commissioners determines the disposition to be made of the case; for, if Butler was the claimant before the land-commissioners, and the confirmation was to him, it is not questioned that the plaintiffs have his title. On the other hand, if Bankson was the claimant, & furnished the evidence of his derivative equitable title, and the confirmation enured to him, and not to Butler, then the plaintiffs have no title.

At the trial the court declared, as matter of law that the "legal effect of the proceedings before the board of commissioners for the adjustment of land-titles in 1811, read in evidence by the plaintiffs, is to confirm the land therein mentioned to James Bankson, assignee of John Butler, the assignment by Butler to Bankson having been filed as part of the claim of said Bankson." This instruction assumes that Bankson was the claimant before the board. Does the record of the proceedings of the board show this fact? The following entries appear.

"Claim—Statement and notice.

"John Butler claims 200 arpents of land, situated in the district of New Madrid, under second section of the act of Congress."

Then follows the record of an order & certificate of survey, the survey being dated February 6, 1806. Then follows Butler's contract of sale to Bankson. The first action which the board appears to have taken
64 on the subject was April 12, 1811. The record is as follows:

"FRIDAY, *April* 12, 1811.

"Board met. Present, John B. C. Lucas, Charles B. Penrose, & Frederick Bates, commissioners. James Bankson, assignee of John Butler, claiming 200 arpents of land, situated on Cypress Swamp, district of New Madrid, produces to the board an order of survey, dated the 16th April, 1801; a certified copy of a conditional transfer from

Butler to claimant, dated 23d July, 1801; a plat of survey dated 2d February, 1806. The board grant to John Butler or his legal representatives two hundred arpents of land, & order that the same be surveyed as nearly in a square as may be, & to include his improvements. Board adjourned till Monday next, 9 o'clock a. m."

The record is then signed by the commissioners. The record then shows an entry under date of June 20, 1811, thus: "Board met. Present, (full board.) Certificate 1103. John Butler's legal representatives, book 5, page 148. Survey at expense of the United States." Certificate No. 1103 recites that the board had "decided that the legal representatives of John Butler" were entitled to a patent. The certificate is dated June 20, 1811.

It is thus seen that the record shows with distinctness that James Bankson, as assignee of John Butler, claimed the land and "produced" to the board the evidence upon which a confirmation was granted. The memorandum "John Butler claims," &c., is evidently an error. When the commissioners took up the claim and acted upon it they only recognize Butler as the assignor of Bankson. Bankson is recognized as the real claimant, and as the party who in due time and way furnished the evidence on which the action of the board was founded. The "conditional transfer" from Butler to Bankson was a prominent feature in the evidence, and shows that Bankson was the claimant before the board and that he was claiming under the conditional conveyance. The transfer furnished a link in his chain of title, and was therefore important to him. Butler's claim rested upon the original permission of settlement & survey. That was his evidence of title. The only effect of the transfer was to show that he had parted with his interest, and that Bankson was the true, equitable owner.

65 Neither Butler or Bankson had a legal title. The claim originated in a permission of settlement. The legal title did not pass till the claim was confirmed by the United States. The confirmation therefore was of an equitable title; but the equitable title for the purposes of the confirmation was sufficient. The confirmation enured equally to the claimant, whether the title was legal or equitable, as was settled in Papin vs. Massey, (27 Mo., 445.) The contract of sale given in evidence by the plaintiffs shows that the entire purchase-money was paid by Bankson, and that nothing remained for him to do but the performance of the stipulated settlement-duties, which were of benefit to him and of no advantage to Butler, the seller. The performance of these duties constituted no part of the consideration of the sale. They were conditions to be performed in order to the acquisition of a perfect legal title from the Spanish government. These conditions were to be performed in three years from July 23, 1801, the date of the contract. The land-commissioners' records show that evidence was produced before them proving that the "premises were improved, inhabited, and cultivated in 1802, and continuously till 1805," and they must have found the fact to have been so. Assuming, then, that the records show that Bankson was the legal claimant before the commissioners, and that he produced to the board the evidences of his title, on which the claim was founded, what was the legal effect of the judgment of confirmation? Was the title thereby confirmed in Bankson? That is the question that controls the case. According to the rule laid down in Bissell vs. Penrose, (8 How., 338,) followed in Boon vs. Moore, (14 Mo., 420,) and frequently referred to in the subsequent decisions, & never overruled, that question must be answered in the affirmative.

In Bissell vs. Penrose the case was this: The claim was for 4,000

arpents of land by the five sons of Vasquez, one of whom, Benito, had assigned his share to one Rudolph Tillier. Tillier filed his claim for confirmation with the land-commissioners. It was confirmed as follows: "The board are unanimously of the opinion that the claim ought to be confirmed to said Benito, Antoine, Hypolite, Joseph, or Pierre Vasquez, or their legal representatives." It was held that this
66 confirmation enured to the benefit of Tillier, who filed & proved up the claim before the land commissioners, although his name does not appear as the confirmee. Nelson J., in delivering the opinion of the court says: "By that act (the act of 1805) every person claiming lands, &c., shall deliver to the recorder a notice, &c., of the nature and extent of his claim, and also the grant, order of survey, deed, conveyance, or other written evidence of his claim, to be recorded; provided, at the same time, in the case of a complete grant, that the claimant need only record the original grant, together with the order of survey & plat, all other conveyances and deeds to be deposited with the recorder, thereby making a distinction between the two cases as it respects the derivative title, and in both clearly contemplating that the assignee might be a claimant." The judge then proceeds to say: "This is the view taken of the question in Strother vs. Lucas, on each occasion when it was before this court, (6 Peters, 772; 12 ib., 458.) It was there held that the confirmation was to be deemed to be in favor of the person claiming it." Boon vs. Moore (14 Mo., 420) presents this case. The claim in question in that suit was filed before the recorder of land-titles in 1808 by Jesse Richardson, assignee of Mackay, who was assignee of David Cole, the original concedee. The transfer from Cole to Mackay and from Mackay to Richardson were produced and filed with the commissioners. The confirmation, however, was to "David Cole or his legal representatives." Copies of these transfers were offered in evidence and excluded. The propriety of this exclusion was a question before the Supreme Court. In reference to it Napton, J, says: "If the confirmation by the act of Congress of July 4, 1836, was to Richardson, and not to the legal representatives of Cole, the admissibility of these copies is an immaterial question. We understand the Supreme Court of the United States to have distinctly decided this question in the case of Bissell vs. Penrose."

There can be no doubt as to what the court understood the effect of the decision in Bissell v. Penrose to be. If the exclusion of the copies was an immaterial matter is was so because the confirmation adjudicated Richardson's title, and thereby superseded the necessity of going into proof of its sufficiency prior to the confirmation; and this is the doctrine laid down in Boone v. Moore, as recognized by the
67 judge delivering the opinion of the court in Hogan vs. Page, (22 Mo., 65.) In Hogan v. Page, (2 Wallace, U. S., 605,) it was held that a confirmation to the original grantee, or his "legal representatives," embraced representatives of such grantee by contract, as well as by operation of law; leaving the question open in a court of justice as to the party to whom the confirmation should enure. But in that case the "minutes did not record the fact that any assignment of the land from Condé (the original grantee) to Lamonde (the claimant) had been presented to the board, or that other proof was made of such conveyance," and the absence of that "fact" marks exactly the difference between that case and the class of cases it represents, and Bissell v. Penrose, Boon v. Moore; and other like cases. Where the assignee-claimant made no proof of his derivative title before the board the confirmation is open, but where that proof was supplied and submitted to the judgment of the commissioners, so that they could pass upon that

as well as upon the merit of the original concession, the confirmation enures to the claimant, although his name is omitted in the form of confirmation. Such seems to be the result of the authorities. In Connoyer v. Washington University, (36 Mo., 481,) that principle seems to be recognized by the court, although it held that in that case the defendants failed to bring themselves within its scope. The same judge (Nelson) who delivered the opinion in Bissell v. Penrose also delivered the opinion in Hogan v. Page, and clearly distinguishes between the two class of cases, thus: "On looking into the cases cited on the part of the plaintiff it will be seen that the confirmations which there appear were either to the assignee-claimant by name or in general terms, that is, to the original grantee or his legal representatives, and, when in the latter form, it was the assignee-claimant who had presented the claim before the board and had furnished evidence before it of his derivative title, and which had not been the subject of dispute. The present
68 case therefore is different from either of the cases referred to."

There is here no abandonment of the principle announced in Bissell v. Penrose, but rather an affirmance & reiteration of it. That principle, as illustrated and applied in Boon v. Moore, clearly meets the facts of the case before us. What could the distinction drawn by Judge Nelson in the Hogan case, between assignee-claimants who had and those who had not filed the evidence of their derivative titles, avail, unless it placed the former on a better footing than the latter; and how were the parties filing the evidence benefitted by that fact, unless the confirmation thereupon awarded is treated as an adjudication of the derivative as well as the original title? If this result does not follow it is difficult to perceive what substantial reality there is in the distinction taken, and upon which the Hogan case appears to turn. The result of these views involves an affirmance of the judgment of the circuit court, which was for the defendants. The other judges concur.

W. CURRIER.

(Endorsed:) C. J. Carpenter et al. vs. C. S. Rannells et al. Opinion of the court. Currier. Filed October 25th, 1869. O. T. Fishback, cl'k, per Jos. F. Baier, D. C. Affirmed.

69 And afterwards, to wit, at the October term, A. D. 1869, of said court, the following further proceedings were had in said cause, to wit:

Motion for rehearing.

WEDNESDAY, *November 24th*, 1869.

CHARLES J. CARPENTER, TRUSTEE, &C., APPELLANT,
vs.
CHARLES S. RANNELLS, RESP'T.

Now again comes the *the* said appellant, by his attorney, and files his motion to set aside the judgment heretofore rendered in this cause, & for a rehearing herein; and the court orders that the cause be continued till next term.

Which said motion is in the words & figures following, to wit:

Sup. court St. Louis Co., Oct. T., 1869.

C. J. CARPENTER, TRUSTEE OF SARAH MCCAmant, app'l.,
vs.
CHARLES S. RANNELLS AND R. M. RENICK, HIS guardian, resp't.

The plaintiff and appellant moves the court for a rehearing in this case for the following reasons:

Because there are important facts contained in the record which the plaintiff's counsel deem decisive of the case in favor of plaintiff, which facts are entirely overlooked by the court in their opinion filed in the case, and which facts were referred to in plaintiff's brief; also important points of law overlooked by the court and noticed in brief of plaintiff; and that the decision is in conflict with the acts of Congress applicable to the case, as follows: The court say, and place their opinion upon the ground, that John Butler did not file the claim, and that the record which says so was a mistake or "error." The court do not seem to have noticed the facts shown by the record and the act of Congress
70 referred to in brief for plaintiff. The act of March 2, 1805, sec. 4, required that the claimant should file a plat of the land claimed in the office of the register of lands or recorder of land-titles; also, a "notice" of his claim "in writing" and all his chain of title, &c. These were to be "recorded," and the claimant was to "pay for the recording." This "recording" was the duty of the register or recorder. Neither the commissioners nor their "clerk" had anything to do with it. These "records" make six great volumes, now in the land-office These records say John Butler filed the claim, and the "plat," (or certificate attached to it by a deputy U. S. surveyor,) says John Butler had the land surveyed. Then, if Bankson filed the claim and the plat, the recorder recorded a falsehood, and the surveyor stated one in his certificate to his plat.

The court, in Bissell vs. Penrose, say (p. 334) that "the plat is a part of the evidence of the claim upon which the commissioners' decisions were founded." This claim is recorded in book "A" of these records, and was put there plainly in Feb., 1806. By reference to statutes cited in brief for plaintiff, it will be seen that the last extension of time for "filing" these claims expired July, 1808. Is this court to presume, in the face of such facts, that James Bankson (two years after the record in this case shows that he had sold all the interest he had in the land to Holman Bankson) filed the notice in writing that it was John Butler claiming the land, and that he had the land surveyed as John Butler's, and all this recorded & paid for by him—when the language of the notice and of the survey contained a positive falsehood if Bankson filed the claim as his own, or if it was filed as anybody's but Butler's? The presumption of the court that Bankson filed this claim as his own is not only against the record, but against evidence of his deed to Holman Bankson, put into this case by defendant. These facts and the statute referred to could not have been considered by the court when they presumed that James Bankson filed the claim.

71 The court farther seem to found their opinion upon certain testimony as to "cultivation," which, they say, was before the commissioners, but which is not in the record in this case. The evidence taken before the commissioners is never evidence on trial, and was not offered or put into this case by either side, and is not alluded to in

either brief. This court has no official knowledge on what proof the land was confirmed. Can they presume as to what are facts without evidence, and against the record, in deciding on instructions? Will the court say that J. Bankson cultivated it after he sold it? It would seem a great deal more probable to conclude that between 1804, when James sold to Holman, and 1806, when the claim was filed and survey made in Butler's name, that Holman had abandoned to Butler. After these papers had been recorded in the recorder's office five years, the board, setting in St. Louis, (the parties living in New Madrid,) take up the papers filed; and the minutes of the clerk say that James Bankson, assignee of John Butler, "produces" certain papers, naming them, the same that had been filed. James Bankson had not, up to that time, April, 1811, appeared as "claimant" before the board or on the recorder's files. The time within which any "claimant" could appear had expired near' three years before! If the claim was his in 1806, he was too late with it. He did not file it while the law lasted. The board had no power to entertain it in 1811. This entry on the minutes in 1811 was made by a clerk & signed by the board, as the court have seen. Doubtless the clerk, not knowing who filed the claim and thinking from the papers that Bankson might claim it as assignee, so entered it on his minutes. The clerk or board may or may not have seen the recorder's records. If Bankson did present the papers in 1811, falsifying not only the recorder's records, but his own deed to
72 Holman, then the entry and the act was a fraud upon the recorder's records and the evidence of the "plat," and was invalid to change the "claimant." The confirmation was to "Butler or his legal representatives," the usual formula. No one has denied that that language would carry the title to Butler, or any one claiming under him, by title derived after the claim was filed. The judgment of confirmation is conclusive, and cannot be enlarged or diminished or limited by the "patent-certificate." The court, by undertaking in their opinion to confine the judgment to Butler's representatives by referring to the patent-certificate, have gone in the face of the statute, (act of March 3, 1807, sec. 6,) which declares that they shall certify what they have done. How this "certificate" was understood at the Land Department is evident from the patent (put in the case though not copied, but agreed to be used by either party) issued in 1863 to "John Butler or his legal representatives." That patent is for the land given by the United States in lieu of the New Madrid land, and is the highest and conclusive evidence of title in all ejectment suits. To this point see the full and decisive case of Bagnell vs. Broderick, (13 Peters, U. S. R., p. 436; omitted by inadvertance of counsel in brief for appellant.) The "location" of this land in lieu of the N. Madrid land, was made after the time limited for such locations had expired, but this defect was cured by act of Congress, March 21st, 1866, referred to in appellant's brief, and thus the patent is good and conclusive as to title in "John Butler or his legal representatives."

If the court could go outside of the judgment of confirmation or the patent for the meaning of that judgment, perhaps they would find the certificate of Recorder Bates, (who was one of the commissioners that confirmed the claim,) given in relation to the New Madrid land, quite as plain and explicit, where he says (in 1815) that "it appears from the records in his office that John Butler is the owner."

We do not contend that this certificate altered the "judgment
73 of confirmation," but we do think it shows quite clearly what Bates thought he had decided as commissioner; and perhaps he

knew then, quite as well as anybody can now know, who was before the board claiming the land; and if, in 1811, he had confirmed the land to Bankson as the claimant before them, he must have been very stupid to have said, in 1815, that the land was Butler's. If the recorder's records, made in 1806, contradict the minutes of the board, made in 1811, as to who was "claimant," then the minute in favor of a claimant made three years too late must go under. The court cannot "presume" a record out of existence. It will not "down at their bidding," and the minutes of 1811, made by a clerk, cannot nullify the records made by the proper officer when the claim was filed in 1806; and the commissioners could not lawfully recognize any one in 1811 as claimant, who did not appear as such on the recorder's records or show title from the claimant after the claim was filed. We have never claimed, as the court seem to intimate by their argument & reference to Bissell vs. Penrose, that a party must be named in the confirmation to take under it, but in that case it appears by the recorder's records that Tillier, who took under one of Vasquez' sons, was the person who filed his claim in the recorder's office as assignee & filed also his conveyances and prosecuted the claim before the board.

There has never been an instance in which a party claiming as assignee under a conveyance made to him before the "claim" was filed with the recorder, and who did not file his claim in his own name, with his chain of title as the statute required, has been allowed to come in as a legal representative. The claimant must be the man who filed the claim in the time and manner required by the statute, and nobody but him, or persons claiming under him by conveyances made after the claim was filed, can take the benefit of the confirmation.

The cases from Bissell & Penrose down all concur in this. The case of Papin vs. Massey (27 Mo.) is argued by the court on this ground: that the confirmation to Mackay or his legal representatives did not
74 cut off the plaintiff, because the act of 1832 only recognized claims filed under the early statute, and that the bond under which plaintiff claimed was given in 1819, after the claim had been filed by Mackay, and related back to the time of filing the claim; thus the confirmation enured to the benefit of Mackay's assignee, who became such after the claim was filed. Connoyer vs. Washington University is to same effect: the "claimant" must file his claim. Bankson did not file the claim; he could not, for he had sold what claim he had. The recorder's records and "plat" show who filed the claim, and are the only evidence of that. The clerk's minutes cannot prove that. But there is another point submitted by plaintiff's counsel, and entirely overlooked by the court, which we think is decisive of the case.

Admitting, for the sake of the argument, that the court will infer without evidence, (as we have shown there is none) that because Bankson agreed to perform settlement-duties he had done so, then he only had an equitable title, for the "lease" says that if Bankson performs certain duties then Butler shall make him a deed. A full conveyance was provided for. A trespasser cannot set up an outstanding equitable claim as a defense against the party who has the fee.

If "A" gives a bond of a piece of land to "B" and agrees to give a deed when "B" has paid a certain sum of money, and that money has been paid, but no deed made, and "C" gets into possession of the land without title, and "A" brings ejectment, can "C" set up as a valid defence that "B" has a good right to a deed from "A"? We think it would be difficult, we say impossible, to find any case where anything less than an outstanding fee, or "right of possession" in some one else,

has been successfully set up as defense by a trespasser, or one without shadow of title, as the records show in defendant's case. Neither Bankson nor his representatives had any right of possession under this
75 lease, which had expired before the claim was filed, but only an equity (if anything) to compel a deed by bill, upon proof of condition performed. The case of Papin v. Massey, (27 Mo.) has no relation to this case, as that was a case where both parties claimed under the same person (Mackay,) and the person, plaintiff, claimed under a bond for a deed with proof of condition performed, which bond was given after the original filing of the claim by Mackay, as before stated.

We respectfully ask the court to give this case a careful consideration. We do not think, upon reading the two opinions of the court in this case, that it has received the consideration that ought to be given to it. It involves many new points, not to be found in the cases before decided, and we think the court owe it to themselves, not having had large experience in this class of cases, to look at it in every possible point of view.

HILL & JEWETT,
For Appellant.

(Endorsed:) Filed November 24, 1869. O. T. Fishback, cl'k, per Jos. F. Baier, D. C.

And afterwards, to wit: at the March term, A. D. 1870, of said court, the following further proceedings were had in said cause, to wit:

Motion for rehearing overruled.

MONDAY, *April 18th*, 1870.

CHARLES J. CARPENTER, TRUSTEE, &C., APP'T,
vs.
CHARLES S. RANNELLS ET AL., RESP'T.

76 Now again come the parties by their respective attorneys; and the court, having heard & fully considered the motion of the appellant herein for a rehearing in this cause, doth overrule the same.

Opinion filed.

Which said opinion is in the words & figures following, to wit:

In the supreme court, March T., 1870.

CARPENTER ET AL.
vs.
RANNELLS. } Motion for a rehearing.

The principle laid down in Bissell v. Penrose, and in the cases following that adjudication, is not drawn in question by the plaintiff's motion for a rehearing; but it is insisted that the facts of the present case do not bring it within the influence of these decisions, it being claimed that the records of the recorder of land-titles show that Butler, and not Bankson, was the party claimant who procured the confirmation. It is insisted that the United States land-commissioners' records must "go under," when they come in conflict with the recorder's entry, which assumes to name & identify the claimant. We take a different view of

the legal effect of these records, and are of the opinion that the titles or headings which the recorder saw fit to prefix to his record of the papers in the case must yield, if it comes in conflict with the records of the land-commissioners. These records show that Bankson was recognized by the commissioners as the legal and only claimant before them, and that they adjudicated the claim in conformity with that fact. We adhere, therefore, to our opinion: the circuit court, by its instruction, declared the true, legal effect of the action of the commissioners. It was the duty of the recorder to record the title-papers delivered to him for that purpose; but the title or heading prefixed by him to the
77 record of the papers in a particular case neither fixed the character of the papers recorded nor determined the fact as to who the claimant was.

These were matters not for him, but for the land-commissioners to pass upon.

But it is said that a stranger cannot set up an outstanding equity against the party holding the fee. Butler had no fee to the New Madrid lands, unless he acquired it through the confirmation; and that brings us back again to the question respecting the legal effect of the action of the United States land-commissioners. Prior to the confirmation, neither party held any interest in the lands beyond a mere equity. If the confirmation was to Bankson, and enured to his benefit, we do not understand it to be claimed that the plaintiffs have a title, upon the strength of which they can recover in this case.

The motion is overruled.

WARREN CURRIER.

(Endorsed:) Filed April 18, 1870. O. T. Fishback, cl'k, per J. F. Baier, D. C.

78 And afterwards, to wit, at the October term, A. D. 1871, of said court, the following further proceedings were had in said cause, to wit:

WEDNESDAY, *November* 29, 1871.

CHARLES J. CARPENTER, TRUSTEE, &C., APpellant,
vs.
CHARLES S. RANNELLS ET AL., RESPONDENTS.

Now again comes the appellant, by his attorneys, and files a writ of errror from the Supreme Court of the United States in this cause, which is allowed. Citation filed. Bond filed and approved.

Which bond is in the words and figures following, to wit:

79 *Bond.*

Know all men by these presents, that we, Britton A. Hill, as principal, and Daniel T. Jewett and Andrew W. Mead, as sureties, are held & firmly bond unto Charles S. Rannells in the full & just sum of five hundred dollars, to be paid to the said Charles S. Rannells, his heirs, executors, administrators, or assigns; to which payment, well & truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly & severally, by these presents, sealed with our seals, & dated

this 29th day of November, in the year of our Lord one thousand eight hundred & twenty-one.

Whereas lately, at the March term, A. D. 1870, of the supreme court of the State of Missouri, in a suit depending in said court between Charles J. Carpenter, trustee of Sarah S. McCamant, judgment was rendered against the said Charles J. Carpenter, trustee as aforesaid, and the said Charles J. Carpenter, trustee as aforesaid, having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Charles S. Rannells, citing & admonishing him to be & appear at a Supreme Court of the United States to be holden at Washington the 1st Monday of December, A. D. 1872:

Now the condition of the above obligation is such that if the said Charles J. Carpenter, trustee, as aforesaid, shall prosecute said writ to effect, and answer all damages & costs, if he fail to make good his plea, then the above obligation to be void; else to remain in full force & virtue.

BRITTON A. HILL. [SEAL.]
DANIEL T. JEWETT. [SEAL.]
ANDREW W. MEAD. [SEAL.]

Sealed & delivered in presence of—

Approved by—

P. BLISS, *Presiding Judge.*

(Endorsed:) Cha's J. Carpenter, trustee, &c., P. E., vs. Cha's S. Rannels, D. E. Bond of appeal. Filed Nov. 29th, 1871. Francis Minor, clerk, per Jo's F. Baier, D. C.

80 STATE OF MISSOURI, *ss:*

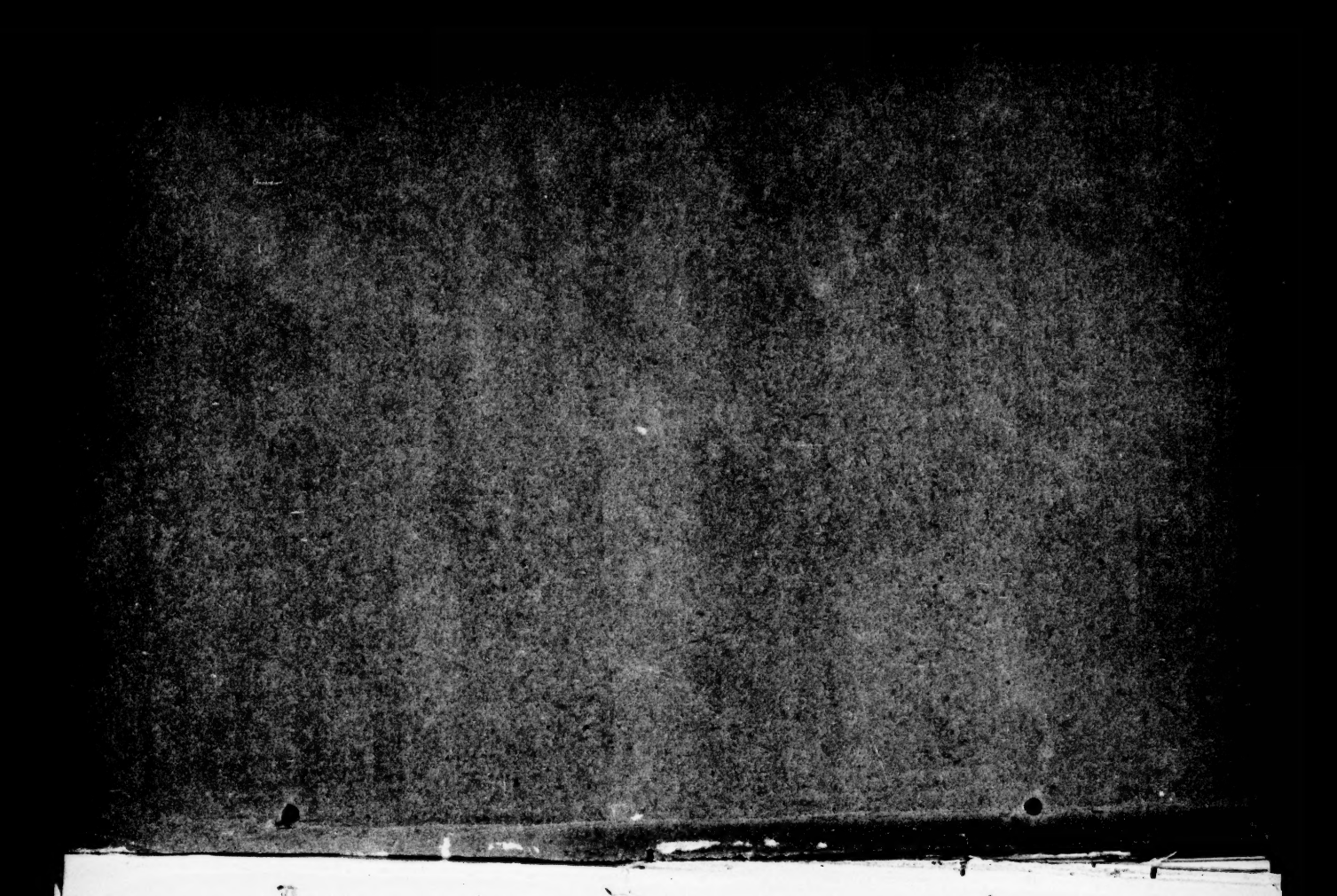
I, Francis Minor, clerk of the supreme court held at St. Louis, of the State of Missouri, certify that the above and foregoing is a full, true, and complete transcript of the record and proceedings had in the above-entitled cause, as fully as the same remain of record and on file in my office.

In testimony whereof I hereto set my hand and affix the seal of said court at office in the city of St. Louis, this 27th day of June, A. D. 1872.

[SEAL.]

JAMES MINOR, *Clerk.*
Per JO'S F. BAIER, *D. C.*

(Indorsement on cover:) No. 403. Charles J. Carpenter, trustee of Sarah S. McCamant, plaintiff in error, vs. Charles S. Rannels. Missouri sup. court. Filed 26th July, 1872.



Supreme Court of the United States.

No. 188.

OCTOBER TERM, 1873.

CHARLES J. CARPENTER, TRUSTEE OF SARAH S. McCAMANT, PLAINTIFF IN ERROR,

vs.

CHARLES S. RANNELS, DEFENDANT IN ERROR.

STATEMENT AND BRIEFS BY BRITTON A. HILL, OF COUNSEL FOR PLAINTIFF IN ERROR.

STATEMENT OF CASE.

This is a suit in ejectment for 200 arpents of land in township 45, north of range 6 east, near St. Louis, located by New Madrid certificate of relocation No. 511, under Act of Congress of February 17th 1815 (3d U. S. Stat. p. 211) and supplementary acts, in lieu of lands in New Madrid County that had been injured by earthquakes; on which a patent issued to John Butler and his legal representatives on the 30th of March 1863, (Rec. p. 19.) pursuant to an United States survey of June 13th 1834. (Rec. p. 22.)

The return of this survey to the recorder of land titles was not in time to pass the title, and an enabling act was passed by Congress on the 21st of March 1866, vesting the title to the lands sued for in John Butler or his legal representatives, (U. S. Stat. 1865, p. 12; Rec. p. 28.) The legal title therefore vested in John Butler, or his legal representatives, in 1866, and that title passed pursuant to U. S. survey of 1834, the deeds and the patent thereon of 1863, (Rec. pp. 19, 22, 28) to the plaintiff. (Rec. p. 41.)

This plaintiff holds the legal title of John Butler's legal representatives, (Rec. pp. 22, 32, 33, 35,) by deeds duly acknowledged and recorded, as admitted by the Court below, (Rec, 41.)

The defendant has no title from any one of the legal representatives of John Butler; nor has he any title from one James Bankston, a lessee of John Butler, from 23d of July 1801 to 23d July 1804. (Rec, pp. 10, 11.)

The defendant, standing before the Court as a mere trespasser upon the land embraced in the patent to John Butler or his legal representatives, sets up as a defence to this suit in ejectment, a supposed outstanding title in James Bankston, and his assignee Holman Bankston. (Rec. p. 14.)

The deeds introduced by defendant from John B. Carson and wife to Evans, of 10th June 1853; from Evans to Rannells of the next day, and from Winsor and Stamper of 1859, have no relevancy, and are not in the chain of title or connected with John Butler, James Bankston, Holman Bankston, or either of their legal representatives. (Rec. p. 36, 37, 38.)

The only defence urged in this case, is, that the confirmation of the 200 arpents of land in New Madrid, was made in 1811, to John Butler or his legal representatives, and enured to the benefit of James Bankston or his legal representatives. The defendant in error insists, and the Court below held, that this confirmation of 1811 enured to the benefit of James Bankston as the claimant "of his derivative equitable title." (Rec. p. 41.)

The plaintiff in error insists, that the equitable title by the confirmation of the New Madrid lands in 1811, passed to John Butler or his legal *representatives*, and that the equitable title never having been perfected by a patent, (*Burgess vs. Gray*, 16 How. 48,) the legal title to the New Madrid lands remained in the United States until they were destroyed by the earthquakes in 1811 and 1812, and the New Madrid act of 1815 was passed to give the equitable as well as the legal owners of the New Madrid lands, other lands in lieu of those destroyed or injured by the earth-

quakes; that in pursuance of said Act of Congress, the United States in 1866 granted the land sued for, to John Butler or his legal representatives, as surveyed for him in 1834, and patented to him in 1863; that the plaintiff is the owner of that legal title, which cannot be affected by any outstanding equity of Bankston to the New Madrid land, as the lessee of Butler, (Rec. p. 10); that the defendant is not the assignee of Bankston's equity, and has no right to set up that equity against the plaintiff's legal title. *Bagnall vs. Broderick*, 13 Peters, 436, in point.

The facts concerning the confirmation of the New Madrid lands appear of record, from which I abstract the material points, the Court bearing in mind that plaintiff claims the legal title to the land sued for to be vested absolutely in him by the patent of 1863 and the Act of Congress of 1866, even if Bankston had an equitable claim to the New Madrid lands, under the confirmation of 1811.

Extract from the Record, p. 7.

"*Confirmation of New Madrid land to John Butler, and transcript of Bates recorder, of New Madrid location.*

"Claim Statement and Notice.

"John Butler claims 200 arpents of land, situate in the district of New Madrid, under the second section of the Act of Congress made and provided.

"Order.

"M. Story, arpentee a 200 a. de terre pour le S'r Jean Butler sur une fourche de Grand Bayou pres de la terre du Sieur Daniel Bingston. Donne a la Nouvelle Madrid le 16 d'Avril de l'annee 1801. HENRI PEYROUX.

"Order—Translation.

"Mr. Story will survey 200 arpents of land for the S'r Jean Butler, on the fork of the Grand Bayou, near the land of S'r Daniel Bingston. Given at New Madrid, the 16th of April of the year 1801. HENRY PEYROUX."

The plat of the land is printed in the Record, p. 7, Thomas Crespin on the north, and Daniel Bankston on the south.

"I do certify that the above plat represents 200 arpents of land, French measure, situated in the district of New Madrid, Louisiana Territory, surveyed by me *at the request of John Butler, who claims the same* by virtue of a grant or permission of settlement from Captain Henry Peyroux, while commandant of the district of New Madrid aforesaid, and in virtue of the second section of the Act of Congress respecting such claims, and past the 2d day of March last. Given under my hand this 2d day of February *anno* 1806.

See Record Book A, p. 396. JOSEPH STORY,
Deputy Surveyor, N. Madrid Dst.

This is the first of the Record Books A, in the office of the U. S. Recorder of Land Titles at St. Louis, and it was begun in June 1805, and continued for five volumes up to 1811.

This claim was filed as early as February 1806. The act of 2d March 1805, § 4, p. 326, vol. 2, required the claims to be filed before the 1st of March 1806, with the recorder of land titles.

This claim was filed under the second section of the act of 1805, U. S. Stat., vol 2, p. 325, by John Butler, and he filed the lease to Bankston, with a view to prove his own possession by his tenant from July 1801 to July 1804.

The lease to Bankston appears on the Record p. 8, the translation p. 10. It was a lease for three years at $40 rent admitted to be paid in advance, and the owner Butler declared, "The present lease is made subject to the following charges, stipulations and conditions:

"First—That the said Mr. James Bingston obliges himself during the course of said three years, to erect on said tract all the improvements and establishments, to break up the ground, and to make the royal road and other improvements required by law, to be enabled, at the end of three years from the petition for said land, to obtain the title of proprietorship from the government of the province.

"Second—The sum of forty piasters, which Mr. John Butler acknowledges to have received of the said Mr. James

Bingston, and of which payment he hereby acquits and discharges him.

"Third—Finally also on condition that if, at the end of the three years of this lease, the said Mr. James Bingston shall have made on the said plantation the improvements, the establishments, the breaking up of the ground, and the royal roads ordained by law, that the said habitation shall belong to him in full proprietorship, and the said John Butler obligates himself, his heirs and assigns, to solicit the title of the government, and to make a regular transfer of said land to said Bingston, without any further cost on his part, except the expenses of the necessary deeds, acknowledging that the price for said land has been paid by the full execution of the conditions expressed in the present lease, and Mr. James Bingston who was present, has promised to fulfill and execute all the said clauses and conditions under penalty of the forfeiture of the advantages which might result in his favor. Made, &c., at New Madrid, A. D. 1801, July 23. Signed by Butler and Bankston and witnesses."

There is no evidence in this case that James Bankston ever performed any of the conditions of the lease, or that he claimed the benefit of it beyond the three years which expired on the 22d of July 1804.

There is no evidence in the case that Jas. Bankston ever performed any settlement duties, or made any road or improvements on this land prior to the confirmation.

The claim of John Butler for the confirmation of 200 arpents of land, to him as claimant, was filed by John Butler in February, 1806, nineteen months after the lease to Bankston had expired; a short time before the 1st of March, 1806, when all claims were barred by the act of March 2d, 1805, and in this claim Butler ignored all claim by Bankston. Butler claimed directly under the 2d Sec. of the Act of 1805, which required possession on the 20th of December, 1803, and the lease was filed to show his possession by Bankston, his tenant, on that day.

The claim of John Butler remained without any action upon it that appears of record, until 1811, April 12th, when

the Board at St. Louis, 300 miles from New Madrid, took up the claim of John Butler for adjudication, and the clerk of the Board entered in the minutes: "James Bankston, assignee of John Butler, claiming 200 arpents of land, situated on Cypress Swamp District of New Madrid, produces to the Board an order of survey, dated April 16, 1801, a certified copy of a conditional transfer from Butler to claimant, dated 23d of July, 1801, a plat of survey, dated 2d of Febr., 1806."

This entry in the minutes of the Board by Thos. F. Riddick, clerk, in April 1811, is not any evidence of the matters therein stated, and is in direct conflict with the claim of Butler, filed Feb. 1806. *Gamache vs. Piquenot*, 16 How., 451. *Williams vs. Carpenter*, 42 Mo., 327; 35 Mo., 52. 28 Mo. 452. *Thomas vs. Wyatt*, 31 Mo. 192.

The judgment of confirmation is record evidence and is as follows:

"The Board grant to John Butler or his legal representatives, 200 arpents of land, and order that the same be surveyed as nearly in a square as may be, and so as to include his improvements." April 12th, 1811. Rec. p. 9.

In the "American State Papers," "Public Lands," Vol. 2, p. 722, Nos. 1,102 and 1,103, Duff Green's Edition of 1834, there appears the two confirmations No. 1,102 to Daniel Bankston under *James Bankston*, for 300 arpents of land on the Bayon St. Thomas, and No. 1,103 to John Butler's legal representatives for 200 arpents of land.

The plat of survey of Joseph Story, U. S. Deputy Surveyor New Madrid District of 2d. of February, 1806, made at the request of John Butler, who then claimed the 200 arpents, under the grant of April 1801, and the 2d section of the Act of Congress of 2d May, 1805; and certified to the old Board of Commissioners by the surveyor, was recorded as a muniment of title by the Recorder of Land Titles, in Book A, p. 396, in support of John Butler's claim, to his 200 arpents that had been leased to James Bankston for three years, on the 23d of July, 1801. (Rec. p. 10.)

By that plat of survey, John Butler's land is bounded on the south by Daniel Bankston, who claimed 300 arpents under *James Bankston*, as appears from the State Papers, Vol. 2, p. 722. The order of survey by Peyroux of the 16th April, 1801, (Rec. p. 7,) states, that Butler's land is near Daniel Bingston's.

By the record of confirmation it appears that John Butler claimed these 200 arpents of land in February 1806, as land granted to him by Peyroux, the 16th of April, 1801, near Bingston's land, and surveyed by Story, 2d February, 1806, for Butler and at his request, that John Butler claimed these 200 arpents of land before the Board as his, in Feb. 1806, by filing the Spanish order of settlement of April 1801 the lease to Bankston of July 1801 for three years, and the survey of Story of February 2d, 1806, with the Recorder of Land Titles.

This claim of John Butler was recorded in Book A, p. 396 of the Records of the Recorder of Land titles, together with the settlement right of 1801, under the 4th Sec. of the Act of 2d March, 1805, 2 U. S. Stat. p. 326, sec. 4.

This was the only claim for confirmation ever filed for this land, and it was duly recorded as required by law, and became a record, *id*

James Bankston never filed any claim with the Recorder of Land titles for this or any other land. See State Papers, Vol. 2, p. 722 and index to volume 2. Daniel Bankston under James Bankston claimed 300 arpents next Butler's.

The confirmations were to John Butler for 200 arpents, and to Daniel Bankston under James Bankston for 300 arpents. The survey bounds these tracts by each other. (Rec. p. 7.)

The plaintiff claims that the confirmation was to John Butler and his legal representatives, that he was the only claimant who had complied with Sec. 4 of the act, p. 326, Vol. 2, and that the confirmation was direct to Butler or his legal representatives in 1811.

Plaintiff further claims, that the erronous entry of the clerk of the Board, Mr. Riddick, in 1811, is no evidence of anything, and is directly in conflict with the record of the claim by the Recorder of Land titles in February 1806, which is made evidence by the 4th Sec. of said Act.

The Board of Commissioners did not pass upon the erroneous recitals of Mr. Riddick, their clerk, but upon the records of 1806, as they were required to do by law. Vol. 2. U. S. Stat. 2d March, 1805, secs. 4 and 5, pp. 326, and the judgment of confirmation was to the claimant John Butler or his legal representatives. (Rec. p. 9.)

There is no derivative title from John Butler to James Bankson to the equitable or inchoate title of John Butler under the confirmation of 1811.

This was the state of the equitable title of John Butler in 1811, when the land confirmed to him, was destroyed or materially injured by earthquakes.

The U. S. passed the act of 1815 for the relief of Butler and others, and public lands of the United States subject to sale were to be located by the claimants of the New Madrid lands in lieu of the lands injured or destroyed by the earthquakes. The Recorder of Land Titles was the officer authorized to take testimony as to the lands damaged by earthquakes, to take the relinquishments of claimants and to issue certificates of material injury by earthquakes.

The Recorder of Land Titles was the officer appointed to take this testimony. 3d U. S. Stat. p. 417, p. 211, sec. 1, 2, 3. It was taken. The claimant was John Butler for his 200 arpents, at Cypress Swamp; the relinquishment of title to the New Madrid lands was by John Butler, (Rec. p. 10.) the claimant.

The certificate of material injury by earthquakes states John Butler to be the claimant, and it was delivered to James Evans, (Rec. p. 10.) who was the attorney in fact of John Butler, who claimed officially before the Recorder of Land Titles to be the owner of the said 200 arpents of land injured by the earthquakes, and who relinquished the title to the United States through the agency of James Evans,

his Attorney in fact, by letter of 10th of Dec., 1818. (Rec. p. 10, 11 and 12.)

The United States received this land in New Madrid by force of the relinquishment of John Butler by his attorney in fact, and thereupon issued a patent certificate for the land sued for to John Butler or his legal representatives, Sept. 2, 1834, that was taken from the Recorder of Land Titles by one Wm. Smith who had no claim to it. But the exchange of lands between the United States and John Butler was perfected by the issue of the patent certificate in 1834, the United States becoming the owner of the New Madrid lands, and John Butler the owner of the land sued for (*Cabanne vs. Lindell*, 12 Mo. p. 184), which resulted in a patent to him in 1863, confirmed by said Act of Congress of 1866, to John Butler and his legal representatives.

The sovereign power of the United States thereby granted the legal title to the land sued for to John Butler and his legal representative, who was the confirmee of the 200 arpents in New Madrid.

The plaintiff thereupon asked the court below to give the following instructions which were *refused* by the court, and plaintiff excepted.

First.—The court is requested to declare the law to be that upon the record evidence put into the case as to the proceedings before the board for the confirmation of land titles, the confirmation did not ensue to the benefit of James Bankston or his legal representatives.

Refused. C. B. LORD.

Second.—The confirmation in this case is to John Butler and his legal representatives, and to no other person.

Refused. C. B. LORD.

Third.—The act of Congress, approved the 21st of March 1866, makes the location in this case valid, if the location is valid in all other respects, than that it was made or located after the expiration of the time specified by law for making said location; and the patent of the United States to John Butler and his legal representatives read in evidence in this case is conclusive proof of the validity of said

New Madrid location upon the lands described in the patent. C. B. LORD.

Refused.

Fourth—The lease of 1801, from John Butler to James Bankson, is not evidence of any transfer of title to James Bankson beyond the leasehold interest of three years, and in order to raise an equity in Bankson or his legal representatives, to claim a conveyance from Butler or his legal representatives, it is necessary for Bankson or his legal representatives to prove that James Bankson did perform the conditions of said lease, so as to entitle him to a conveyance of the title of John Butler or his legal representatives. C. B. LORD.

Refused.

The Court thereupon gave the following instructions for the defendant, to which the plaintiff excepted.

1. The defendant moves the Court to decide the law to be, that the legal effect of the proceedings before the board of commissioners for the adjustment of land titles in 1811, read in evidence by the plaintiff, is to confirm the land therein mentioned to James Bankston, assignee of John Butler, the assignment by Butler to Bankston having been filed as part of the claim of said Bankston. C. B. LORD.

Given.

2. The defendant moves the Court to decide the law to be, that if it has been shown by the evidence to the satisfaction of the Court that prior to the 12th day of February 1815, said Butler transferred to James Bankston his interest in the land, in lieu of which New Madrid certificate No. 511 read in evidence issued, then said certificate did not enure to the benefit of said John Butler or his heirs, nor vest any title in either of them. C. B. LORD.

Given.

The Court sitting as a jury found for the defendant and plaintiff moved for a new trial, (Rec. p. 17,) which was refused, plaintiff excepted, and the bill of exceptions was duly signed and filed, and an appeal was allowed to the general term where the judgment was affirmed, and an appeal was taken to the Supreme Court of Missouri. The judgment was again affirmed, and a writ of error was taken to this honorable Court.

BRIEF FOR PLAINTIFF IN ERROR.

1. The Court below erred in both the instructions given for the defendant on the trial of this cause.

The legal effect of the *record* in the proceedings for confirmation is to confirm the 200 arpents in New Madrid to the claimant John Butler, and there was no legal evidence in the proceedings for the confirmation, that James Bankson was the assignee of John Butler.

The confirmation was made in 1811 upon a claim filed in February 1806 by John Butler with the United States Recorder of Land titles, under the 2d section of the Act of Congress of 2d March 1805, creating a Board of Commissioners in Upper Louisiana, now Missouri, Arkansas and Iowa, to examine and confirm the claims of French and Spanish settlers and grantees under the French and Spanish governments, as they existed prior to the treaty of Paris of 20th December 1803.

The Act of 2d March 1805, 2 U. S. Stat. 324, was the first one passed for this purpose. It created a Recorder of Land Titles for Louisiana (Missouri,) Sec. 3, p. 326, and required all persons claiming lands under settlement rights (Sec. 4, p. 325), to file a notice of the claim, all grants, orders of survey and title papers, and a plat of the land, on or before the 1st day of March 1806, to be recorded by the Recorder of Land Titles, and all persons failing to do so, were forever barred from claiming anything thereunder.

Other acts of Congress were passed on the 3d of March 1806, and 3d of March 1807, extending the time for filing claims for land with the Recorder of Land titles to be recorded up to 1st July 1808. 2 U. S. Stat. 441, Sec. 5. After the 1st of July 1808, no claims for land could be filed or recorded with the Recorder, or passed upon by the Board of Commissioners, and unless they were filed and recorded on or before the said day they were barred.

By the said Act of 2d March 1805, a Board of Commissioners was created with a *limited jurisdiction* to make confirmations to those claimants *only* whose *claims*, grants, orders of survey and title papers were recorded by the Recorder of Land titles. These *claims* for confirmation were *suits* against the United States to perfect the titles of the inhabitants to the lands claimed by them in the ceded territories of Orleans and Louisiana.

There were but two parties to each suit, the claimant and the United States, there was but one record upon which the Board of Commissioners, the judges, could act, and that was the record made of the claim of each claimant, by the Recorder of Land Titles. The judgment of confirmation or of rejection, was based upon the record of the Recorder of Land titles, and bound no other person or party than the claimant and the United States.

This has been the settled law of this Court in all actions at law where the *legal title* only has been in controversy, and no special equities have been set up by an adversary claimant of the equitable title to the confirmation.

Thatcher v. Powell, 6 Wheaton, 119.
Henderson v. Poindexter, 12 Wh. 538, 9.
Wilcox v. Jackson, 13 Pet. 449.
Strother v. Lucas, 6 Pet. 771, 3.
Id. 12 Peters 453, 4, 458.
Barry v. Gamble, 3 How. 50.
Chouteau v. Eckert, 2 How. 374.
Bissell v. Penrose, 8 How. 333, 338.
United States v. Percheman, 7 Pet. 85, 90.
Hogan v. Page, 2 Wallace 605.

The confirmation of the legal title must therefore be to the *claimant*, if any other person has any equitable claims to the benefit of the confirmation, he must establish his equity in a court of justice and obtain the proper decree for title, as was done in the case of Magwire v. Tyler, 8 Wall, 650, and 17 Wall. *West* v. Cochran, 17 How. 413 held this could not be done at law.

In all actions at law the confirmation must be held to be to the claimant, and whatever trusts may exist in favor of other parties, must be ascertained and determined by the Courts of Justice.

2. The defendant does not pretend to be a legal representative of James Bankson, he is a mere trespasser, but in his defence against the legal title of John Butler's legal *representatives* to the land patented to John Butler and his legal *repesentatives*, in lieu of the land materially injured by earthquakes; he insists that James Bankson is the party equitably entitled to the benefit of the confirmation of the 200 arpents, and therefore equitably entitled to the land patented to John Butler; under the statutes of Missouri, and the cases of *Mitchell vs. Tucker*, 10 Mo., and others.

But no one can set up this equity claimed by defendant to have existed in this case in favor of James Bankson and his son, under the confirmation of 1811, except their assignees and they must go into a court of equity to assert their claim.

3. The precise statement of the lease and contract of sale by John Butler to James Bankson of 1801 is, that if Bankson performed the conditions mentioned, "the said John Butler obligates himself, his heirs and assigns, *to solicit the title of the government, and to make a regular transfer of said land to the said James Bingston without any further cost on his part, except the expenses of the necessary deeds*, acknowledging that the price for said land has been paid by the full execution of the conditions expressed in the present lease," &c. (Rec. p. 11.)

The sovereignty of the country having changed from France to the United States in 1803, during the life of the lease, it became the duty of John Butler, if the lease and contract of sale had been complied with by Bankson, to proceed "to solicit the title of the (new) government," so that if Bankston had complied with the contract, he (Butler)

could "make a regular transfer of said land to Jas. Bankson without any further cost on his part except the expenses of the necessary deeds." (Rec. p. 11.)

It appears therefore perfectly clear that John Butler proceeded in strict conformity with his contract of sale with Bankson, to solicit the title of the Spanish Intendant of the Province, 15th July 1801, (Rec. p. 15) then of the United States in his own name as claimant in 1806, so that if Bankson demanded and insisted upon a performance of the contract of sale, and paid for the expenses of the necessary deeds, Butler could make him a deed for *the title.*

John Butler therefore claimed the 200 arpents of land from the Spanish Governor in 1801, and from the United States in February 1806; filed the U. S. survey by Story, deputy U. S. surveyor of 2d February 1806, the order of the survey from Peyroux, Spanish Commandant of April 1801, and the lease and contract of sale of July 1801.

The manifest purpose of Butler as well as his obligation under the contract with Bankson, was to procure the confirmation of the legal title to himself, so that he could be prepared to fulfill his contract with Bankson, if demanded, and the expenses were paid.

John Butler accomplished his object, and became vested with the title from the United States, in compliance with his contract of sale. I have no doubt whatever that under the contract of 1801, Bankson's son Holman, who had become the assignee of the equitable claim of his father by a deed of the 25th of September 1804, (Rec. pp. 14, 15,) would have been entitled to a deed from John Butler after the confirmation in 1811, if he had performed the conditions of the contract—of his father with Butler.

But the lands had been confirmed to John Butler only a short time, when the earthquakes of 1811 materially injured them, and Holman Bankson, the assignee of the contract of 1801, who was entitled to the deed upon paying the expenses, as soon as John Butler could get the title to convey, never complied with the conditions, and the legal title has

remained in John Butler, until he released it in 1818 to the United States, so as to procure other lands in lieu of the 200 acres that had been destroyed by earthquakes.

The United States have granted the land sued for to John Butler and his legal representatives by the patent of 1863 and the act of Congress of 1866, in lieu of the land injured by earthquakes, and it is no answer to this suit to say Joseph Bankson had an equitable claim to the confirmation of the 200 arpents in New Madrid.

4. The contract of sale shows that John Butler was to perfect the title in his own name from the Spanish government, and after the change of government in 1803 it became his duty to perfect the title *in his own name* from the United States Government; and he did so.

Let us review the record of the confirmation and see if the Supreme Court of Missouri or the Land Court had any authority to try the equities existing between James and Holman Bankson and John Butler, in this action of ejectment against a trespasser.

The Recorder of Land Titles having custody of the records of all confirmations and of all New Madrid locations, states at the heading of this claim the following:

"Confirmation of New Madrid land to *John Butler*, and transcript of Bates, recorder of New Madrid location." Rec. p. 7.

"Henry Peyroux, Spanish commandant at New Madrid, orders Mr. Story to survey it for Mr. John Butler on the 16th of April, 1801."

The survey was made with a plat of the land.

In July 1801, John Butler leases the land for three years to James Bankson and agrees to perfect the title in his own name, and convey the title to Bankson if he pays the expenses.

In Sept. 1804, James Bankson assigns and sells this contract of sale to his son Holman Bankson.

In February 1806, John Butler files his claim, statement and notice, as follows:

"John Butler claims 200 arpents of land," &c.

On the 2d of February, 1806, Mr. Story, the Deputy Surveyor of the United States makes the survey of the land and certifies "surveyed by me at *the request of John Butler*," &c.

In February 1806, John Butler, the claimant, files the lease to James Bankson and the contract of sale, from which it is apparent that John Butler is bound to solicit the title of the government in his own name for his tenant, James Bankson, to whom he is to convey the title on the payment of expenses.

This claim filed at New Madrid, 300 miles distant from St. Louis, and recorded by the Recorder of Land Titles, remains undetermined by the Board of Commissioners, and in April of the year 1811, in the village of St. Louis, took up the case upon the record of the Recorder of Land titles, and Mr. Riddick, the clerk of the Board, seeing from the state of the title that James Bankson had the right to a deed on the payment of expenses, enters in the minutes of Board on April 12th, 1811, "James Bankson, assignee of John Butler;" but it will be seen that the Board in entering judgment of confirmation paid no regard to this error of the clerk, and doubtless saw from the tenor of the conditional transfer of July 23, 1801, that Butler was bound to acquire the legal title from the government; hence the judgment of confirmation was as follows:

"The board grant to *John Butler* or his legal representatives two hundred arpents of land," &c. (Rec. 9.)

From these records it is absolutely certain that John Butler was the claimant of the 200 arpents of land, that the confirmation was to him and his legal representatives, and that the contract of sale required that John Butler should acquire the legal title and make a deed to Holman Bankson for the land on the payment of the expenses.

The error of the clerk Mr. Riddick appears from the face of the record, and from the further fact that in September 1801, after the expiration of the lease, James Bankson had assigned his equitable claim to a deed on paying the expenses to his son, Holman Bankson. Rec. p. 15. In

April 1811 when Mr. Riddick made his erroneous entry, Holman Bankson was the assignee of all the existing equities, and James Bankson was not.

5. In April 1811, James Bankson and all other persons were barred from filing any claim to any land. 2 U. S. Stat. p. 440, 1. The last day for filing claims was on the 1st of July, 1808. The entry of the clerk in the minutes of the Board in 1811, had no power to make James Bankson a claimant as assignee of John Butler; and James Bankson was not then the assignee of John Butler. Rec. p. 15.

It is impossible to conceive how James Bankson, on the face of the confirmation record, is held to be the claimant, or that the confirmation enured to him; when by the plain terms of the lease filed, the title from the government is to be acquired by John Butler, and then to be conveyed by him to Bankson on the payment of the expenses.

The statement of the clerk in the minutes in 1811 that James Bankson is assignee of John Butler is perfectly consistent with the lease and contract of sale, but he is an assignee upon condition only, that John Butler shall get the legal title from the government and make a deed of the land after the title is thus acquired, to James Bankson or his heirs or assigns, and he had assigned to Holman Bankson in 1804. So that the confirmation was made in strict compliance with the lease and contract of 1801, and when the heirs of Holman Bankson appear and comply or offer to comply with the condition of paying the expenses as agreed upon in the original contract, they will have a right to proceed by a bill in equity to assert their right to the equitable claim they may set up under the contract and lease of 1801.

6. The reason why Holman Bankson, the assignee of the contract of 1801, never applied to John Butler to obtain a deed for his title to the 200 arpents, appears from the history of the County of New Madrid. The confirmation vesting the title in John Butler and his legal *representatives* was in April 1811, and soon afterwards the earthquakes materially injured all the lands in the district where his land was situated. (Rec. p. 10.) Holman Bankson did

not want a deed from Butler for 200 arpents of land materially injured by earthquakes, at the cost of the expenses for making the title good to him as the assignee of his father, James Bankson. The land was literally worthless until 1815, when Congress passed an act for the relief of the sufferers by earthquakes in New Madrid, and even then the trouble of relocation was worth a large part of the purchase money.

But Holman Bankson or his *representatives* did not appear. John Butler did. He made a letter of Attorney on the 10th December 1818 (Rec. p. 12) to James Evans to sell the location for 200 arpents now in suit, he had relinquished the lands in New Madrid to the United States, and made his location of lands in lieu thereof. These proceedings at the end of fifty years result in an Act of Congress in 1866 confirming the title of John Butler and his legal representatives, to the land in suit, in accordauce with the title claimed under the U. S. patent of 1863, and the U. S. survey of 1834 for John Butler and his legal *representatives*.

7. The defendant has no standing before the Court authorizing him to question the title under the Butler patent, or raise the equities said to exist in favor of Holman Bankson, the assignee of his father. In this action of ejectment the defendant must show that he has the title of Holman Bankson to the land in New Madrid upon which the New Madrid location of the land in suit was founded. This he has wholly failed to do, and he stands before the Court without any defence to the action of ejectment by the plaintiff showing a clear derivative chain of title from John Butler to the plaintiff.

8. Even as against the equitable claim set up by the defendant in favor of Holman Bankson, the most conclusive presumptions are raised against that claim, by sixty odd years of abandonment by the said Banksons, who have never appeared to assert any claim since 1811. John Butler and his heirs have been vigilant, and within a year after the Act of Congress, their representative brought this

suit, on the 26th February 1867, to recover the land against the defendant, a trespasser.

9. The contract and lease of 1801 did not transfer the title of Bankson, and it was not the intention to do so. Butler agrees to procure the legal title in his own name, and deed the land to Bankson on his paying the expenses.

It is clear therefore from all the record evidence in this case, that the confirmation was to John Butler and his legal *representatives*, for the 200 arpents in New Madrid, on the 12th of April 1811, that John Butler procured a relocation on land of the United States for the 200 arpents now sued for, and obtained a patent to him and his legal represent tives, and that plaintiff is the sole representative of John Butler, and the pretended equity of James or Holman Bankson is no defence to the defendant who has no deed from the Banksons.

In *Hogan vs. Page*, 2 Wallace 605, Louis Lemonde filed his claim in February 1806 for confirmation under the second section of the Act of 2d March 1805, upon proof of ten years possession prior to 20th December 1803. He filed no evidence of any assignment from Conde, the original grantee, who had died in 1778, twenty-five years before the treaty of 1803. Although the confirmation of 1810 was to the legal representatives of Conde, who had then been dead over thirty years, this Court held that the question was open to enquiry in a court of justice, as to the party to whom the certificate should enure, and decides that there was evidence enough to go to a jury, as to whether such assignment was made in fact. At p. 607 this Court says, that whenever a confirmation has been held to be for the assignee as sole claimant, "he had furnished evidence of his derivative title before the Board, which had not been the subject of dispute."

The Court below, in direct conflict with *Hogan vs. Page*, took the question of fact from the jury, and held the law to be, that the confirmation of the land was to James Bankson, assignee of John Butler, upon the face of the proceedings. (Defts. Instructions 1, Rec. p. 17.) This is error.

The lease and contract of 1801 between Butler and Bankson expressly requires the title to this land to be vested in Butler by the government, and in the plainest terms the confirmation declares John Butler to be confirmed, and yet the Court below holds it to be in law a confirmation to Bankson, and not to Butler, in this suit in ejectment against a trespasser.

But even if this were so, as to the land in New Madrid, by what process of reasoning can this trespasser defeat the title of John Butler and his legal representatives under the patent of 1863, and the Act of Congress of 1866, granting the land of the United States to the grantors of the plaintiff. What trusts may exist between Butler and Bankson as to this land sued for, are wholly immaterial in this action of ejectment. It is the duty of Butler and his grantees, if they were trustees for the benefit of Holman Bankson, to prosecute all trespassers entering upon the lands, to which Butler holds a legal title for the benefit of the *cestui que trust*.

The judgment should therefore be reversed, and the cause remanded for a new trial.

St. Louis, January 5, 1874.

BRITTON A. HILL,
Of Counsel for Plaintiff in Error.

IN THE

Supreme Court of the United States

CHARLES J. CARPENTER, Trustee,

against

CHARLES S. RANNELS.

STATEMENT AND BRIEF.

GLOVER & SHEPLEY,

Attorneys for Respondent.

Levison & Blythe, Printers and Stationers, 219 Olive Street, St. Louis, Mo.

IN THE

Supreme Court of the United States

CHARLES J. CARPENTER, Trustee,

against

CHARLES S. RANNELS,

STATEMENT OF THE CASE

By Glover & Shepley,

FOR THE RESPONDENT, DEFENDANT BELOW.

The plaintiff in error brought his suit of ejectment against the respondent, to recover the possession of two hundred arpents of land, in township 45, in the county of St. Louis, located under New Madrid certificate of relocation No. 511, which was issued under act of congress of February 17, 1815 (3 U. S. Statutes at Large, p. 211), and acts supplementary thereto, in lieu of lands in New Madrid county which had been injured by earthquakes, and upon which certificate a patent issued, dated the 30th day of March, 1863, to John Butler, or his legal representatives.

In order to show title in himself the plaintiff gave in evidence the transcript from the proceedings of the old Board of Commissioners, for the adjusting of titles to land in the territory of Orleans and district of Louisiana, under the acts of congress of March 2, 1805 (2 U. S. Statutes at Large, p. 324), and of March 3d, 1807 (2 U. S. Statutes at Large, p. 440), confirming the title to the New Madrid land, in lieu of which the certificate of relocation was issued, which we give in full.

CLAIM.

Statement and Notice.

John Butler claims 200 arpents of land, situate in the district of New Madrid, under the 2d section of the act of congress made and provided.

Order.

Mr. Story will survey 200 arpents of land for Mr. John Butler, on a fork of the grand bayou, near the land of Mr. Daniel Bingston.

Given at New Madrid, the 16th day of April, of the year 1801.

(Signed) HENRY PEYROUX.

(Here follows the plat appearing in transcript.)

This land is situated about ten miles from New Madrid, about a northerly course.

I do certify that the above plat represents 200 arpents of land, French measure, situated in the district of New Madrid, Louisiana territory, surveyed by me at the request of John Butler, who claims the same by virtue of a grant or permission of settlement from Captain Henry Peyroux, whilst commandant of the district of New Madrid aforesaid, and in virtue of the 2d section of the act of congress respecting such claims, and passed the 2d day of March last.

Given under my hand this 2d day of February, anno 1806.

JOSEPH STORY,
Deputy Surveyor, New Md. District.

See record book A, page 396.

Before us, Henry Peyroux de la Condreriere, captain in the armies of His Majesty, and civil and military commandant of the post and district of New Madrid, was present, John Butler, inhabitant of this post, who has by these presents given a lease and rented for three consecutive years, beginning to run from this day, to James Bingston, also inhabitant of this post, a plantation of two hundred arpents of land situated at the place called the Shrub-Prairie at five leagues from this town, bounded in front by the Illinois Road, and on the other side (or sides) by the Bayou St. John, the lands of Thomas Crespin and the domain of His Majesty. In order that he may enjoy the said land like a good father of a family, and cultivate it during the said three years with profit, the present lease is made under the following charges and conditions:

1st. The said Bingston binds himself during the course of the said three years, to make upon the said land all the improvements, clearings, settlements, as well as the King's road, and other works which are ordered by law, so that at the end of three years since the demand for the said land, the title in fee simple may be obtained of the intendancy of this province.

2d. For the price and sum of forty dollars, which the said John Butler owns to have received of the said James Bingston, and of which he acquits and discharges him.

3d. And finally, under the condition that if at the expiration of the three years of the present lease, the said John Bingston has made upon the said plantation the improvements, clearings, establishments and King's roads, ordered by law, the said plantation shall belong to him in full property; and the said John Butler binds himself, his heirs and assigns, to solicit the title thereto from the intendancy, and to execute a sale in due form for the said land to the said James Bingston, without any other

expense than the cost of the deeds necessary to that effect, he (Butler) acknowledging to be paid for the said land by the complete fulfillment of the conditions expressed in the present lease. And at the making of said lease, James Bingston was present, who has promised to fulfill and execute all the said clauses and conditions under the penalty to be deprived of the advantages in his favor resulting therefrom. Done and executed in New Madrid, in the year one thousand eight hundred and one, and on the twenty-third of July; the assisting witnesses being Pierre Antoine Laforge, fulfilling the duties of notary in this post, and Joseph Charpentier, the king's interpreter for the English language. And all the parties have signed, mark X of John Butler, James Bankson Joseph Charpentier, Pierre Antoine Laforge, before us, commandant of the post of New Madrid.

HENRY PEYROUX.

Friday, April 12th, 1811.

Board met—present: John B. C. Lucas, Clement B. Penrose and Frederick Bates, Commissioners.

James Bankson, assignee of John Butler, claiming 200 arpents of land, situate on Cypress Swamp, district of New Madrid, produces to the Board an order of survey, dated 16th April, 1801, a certified copy of a conditional transfer from Butler to claimant, dated 23d July, 1801, a plat of survey, dated 2d February, 1806.

The Board grant to John Butler, or his legal representatives, two hundred arpents of land, and order that the same be surveyed as nearly in a square as may be, and so as to include his improvements.

Board adjourned till Monday next, nine o'clock, A. M.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

See minutes of old Board, book No. 5, pages 145, 148 and 149, Louisiana.

Thursday, June 20, 1811.

Board met—present: Clement B. Penrose, Frederick Bates, Commissioners. John B. C. Lucas, appeared at the Board and took his seat.

Cert. No. 1103. John Butler's representatives, book 5, p. 148. Survey at the expense of the United States.

Board adjourned till to-morrow 8 o'clock, A. M.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

See Board minute book No. 5, pp. 187, 188 and 193.

COMMISSIONER'S CERTIFICATE, No. 1103,
June 20th, 1811.

We, the undersigned, Commissioners for ascertaining and adjusting the titles and claims to lands in the territory of Louisiana, have decided that the legal representatives of John Butler, original claimant, are entitled to a patent under the provisions of the second section of an act of the congress of the United States, entitled "An act for ascertaining and adjusting the titles and claims to lands within the territory of Orleans, and the district of Louisiana, passed the second day of March, one thousand eight hundred and five, for two hundred arpents of land, situate in the district of New Madrid Cypress Swamp, and order that the same be surveyed as nearly in a square as may be, and so as to include his improvements. By virtue of a permission from the proper Spanish officer, and also of actual inhabitation and cultivation, prior to and on the twentieth day of December, one thousand eight hundred and three.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE,
FREDERICK BATES.

The plaintiff then gave evidence relating to the relocation of the lands in St. Louis county, under the act of the 17th Feb'y, 1815, and the patent thereunder, and gave evidence tending to

show that he had acquired the title from the heirs of John Butler, by deeds executed in the years 1855 and 1856 to his grantor.

The defendant claimed title under the same confirmation as being a confirmation not to John Butler, but to James Bankson, and gave evidence tending to prove derivative title under Bankson.

At the close of the case the defendant asked the court to give, and the court gave the following instructions:

1. The defendant moves the court to decide the law to be that the legal effect of the proceedings before the Board of Commissioners, for the adjustment of land titles in 1811, read in evidence by the plaintiff, is to confirm the land therein mentioned to James Bankson as assignee of John Butler, the assignment by Butler to Bankson having been filed as part of the claim of Bankson.

2. The defendant moves the court to declare the law to be that if it has been shown by the evidence to the satisfaction of the court that prior to the 12th day of February, 1815, said Butler transferred to James Bankson his interest in the land, in lieu of which New Madrid certificate, No. 511, read in evidence, issued, then said certificate did not enure to the benefit of John Butler or his heirs, nor vest any title in either of them.

The court, sitting as a jury, found for the defendant. The plaintiff thereupon appealed to the Supreme Court of the State of Missouri, and that court affirmed the judgment of the court below, and the opinion of the court upon the affirmance as well as upon the motion for re-hearing, will be found in the 45 Mo. R. p. 584.

BRIEF.

The respondent submits the following points and authorities:

I. The confirmation in this case was to James Bankson, the claimant before the Board.

For 1st. This record shows that Bankson was the claimant, and the only claimant before the Board. It will be contended that the heading at the top of the record of the documents filed in support of the claim is evidence that John Butler was the claimant, but in point of fact this was a mere memorandum of the clerk of the Board, in order to show to what case the papers belonged, and was an error as is shown by the fact that the transfer of Butler to Bankson was filed by the claimant. If John Butler had been the claimant, then he would have filed only the permission of the Lieut. Governor to settle, and not the transfer to Bankson. But when we come to the record of the proceedings before the Board, and seek to find who was the claimant before them, we find that the Board itself have determined that matter, because they say in the entry of their first action on the claim:

"*James Bankson*, assignee of John Butler, claiming 200 arpents of land," etc., etc., produces "to the Board an order of survey, dated 16th April, 1801; a certified copy of a conditional transfer from Butler to *claimant*, dated the 23d July, 1801; a plat of survey dated 2d February, 1806."

Under the act of 1805 the claimant was required, beside the grant and survey, to deliver to the recorder the "deed, conveyance, or other written evidence of his claim," under which he claims title.

The filing of the deed of Butler to Bankson shows that Bankson was the claimant before the Board. (Bissel *vs.* Penrose, 8 Howard, 337-8.)

If Butler (as the plaintiff in error supposes) had presented the claim originally to the Recorder for the action of the Commissioners upon it, is it possible that he would have produced,

as an evidence of his claim, an instrument executed by himself, which, as we shall see, showed that he had no beneficial interest in the land, having parted with it to another? Under those circumstances, if he had presented it at all, it must be held that he presented it not for himself but as agent of the man to whom he had assigned all the beneficial interest.

The records of the Board when action is taken upon the claim not only take it up as a claim of "*James Bankson*, assignee of John Butler, claiming 200 arpents," etc., but speaks of him as producing to the Board "a certified copy of a conditional transfer from Butler to *claimant*."

The Supreme Court of Missouri hold in this case that the record clearly shows that Bankson was the claimant before the Board. (45 Mo., at p. 592.)

2d. The transfer of Butler to Bankson was efficient to transfer to Bankson the complete inchoate title to this land.

An examination of what this transfer really is will show this: It proves that Bankson had paid to Butler forty dollars, the full price for the land; that at the end of the three years, if the title did not revert to the King, that Butler would make all needful conveyances so as to vest the title in Bankson. Butler expressly acknowledged in that transfer that he had received full consideration for the purchase of this land, and that he was only there longer for the purpose of transferring the title when at the end of the three years it could be obtained from the Spanish government, to the claimant Bankson. In effect it is, that Butler did not warrant title, which every sale of land under the Spanish government did do. Even at common law this transfer would operate as a sale of the land. Suppose the United States granted to A land on condition that he builds a fort upon it, and A sells that land to B with the condition that he builds the fort, and then the United States releases A and B from any obligation to build the fort, is there any doubt that the land belongs to B?

The Supreme Court of the State of Missouri has decided that equitable title to land in claimant is just as efficient as a complete title to obtain a confirmation, and that it enures equally

to the claimant whether his claim be an equitable or legal one. (See Papin *vs.* Massey, 27 Mo. 445, at pages 450 to 453.)

The whole purchase money was paid, and there was nothing that the grantee Bankson had to do but to comply with certain requirements of the Spanish government in order to obtain the grant. There was nothing beneficial to the GRANTOR that the grantee was to do. It was only the performance of conditions beneficial to the GRANTEE. It formed no part of the consideration, but the grantor could not be called upon to make a conveyance until the grant from the Spanish government became perfected by the performance of the conditions.

3d. But, even it was questionable, what was the situation of the claimant without his showing a compliance? He did show such compliance before the Board by showing a constant cultivation of the land. This is shown by the words of the Commissioners' certificate, stating that the land had been cultivated prior to and down to the 20th December, 1803.

4th. This claim was an equitable one to the land addressed originally to the Spanish government, to which our government succeeded, and appointed a Board to pass upon these claims as equitable claims, presented by claimants, whose decisions upon these equitable claims were to be final, and they did pass upon this equitable claim, and did confirm it to the claimant in the general words made use of when the claimant was not the original concedee, *i. e.* to "John Butler, or his legal representatives," but the confirmation certificate was not to John Butler, *but to the legal representatives of John Butler.*

In this regard it presents a stronger case than that of Bissell *vs.* Penrose, which is the leading case. In that case where Rudolph Tillier presented the claim and evidence of title, the confirmation and the certificate were "to Benito, Antoine, Hypolite, Joseph and Pierre Vasquez, or their legal representatives." In this case the confirmation was "to John Butler or his legal representatives," but when the Board came to issue their certificate it was not to John Butler or his legal representatives, but "to the legal representatives of John Butler," thus signifying that John Butler had no interest in it.

If, then, we have shown that James Bankson was the claimant before the Board, it necessarily results that

5th. The claimant Bankson was the person to whom this land was confirmed.

Bissell *vs.* Penrose, 8 How. 338.
Boone *vs.* Moore, 14 Mo. 420.
Hogan *vs.* Page, 2 Wallace, 605.
Same case, 22 Mo. 55.
Cornoyor *vs.* La Beaume, 45 Mo. 139.
Carpenter, Trustee *vs.* Rannels, 45 Mo. 584.

In these decisions are presented two classes of cases, one of which was, when as required by law, the claimant being an assignee, had filed with the Recorder of Land Titles, together with the original grant, the evidence of his derivative title from the original concedee.

The other was when the claimant, claiming as assignee, filed with the Recorder only the original concession, and presented NO evidence of his derivative title, so as to enable the Commissioners to pass upon his derivative title.

In the first class the decision of every court has been uniform—that the confirmation was to the *claimant*.

In the other class it has been held that as the assignee did not present his evidence of derivative title, the Commissioners having no opportunity of passing upon that matter, the confirmation was not a confirmation to the claimant, but left the matter open to inquiry in a court of justice, as to the party to whom the confirmation should enure.

If, as the counsel on the other side contends, it was necessary that the title papers presented by the claimant should show a perfect title, which would support an ejectment, THEN THE DECISIONS IN THE FIRST NAMED CLASS ARE ALL MEANINGLESS, because the claimant then could prove his derivative title from the original concedee at any time, and did not require any decision as to whether the confirmation was to him.

In the case of Bissell *vs.* Penrose, 8 Howard, 338, Rudolph Tillier was the claimant before the Board, exhibiting written evidence of title from Benito Vasquez, one of the original

grantees, and the confirmation was "to the said Benito, Antoine, Hypolite, Joseph and Pierre Vasquez, or their legal representatives." The parties in possession of the land claimed that the confirmation was to the sons of Vasquez, and to their heirs, and was not to Tillier the claimant, and at any rate he could take but the portion of Benito Vasquez in the land confirmed. The court say, at page 338, "It is certainly difficult to perceive what right or claim the son had, either before the Commissioners or congress to be confirmed. Having parted with all his interest, he had neither land nor claim, nor was he a claimant." And on page 341 the court say, "Upon the whole, after the most careful consideration that we have been able to bestow upon the case, the conclusions at which we have arrived at are * * * 2d. That the title was confirmed to Tillier, the assignee, as claimant under the act of 1836."

In the case of Hogan *vs.* Page, 2 Wallace, 605, Louis Lemonde was the claimant before the Board, claiming as assignee of Auguste Conde, and filed with his claim only the original concession to Conde, but neither filed or produced before the Board any evidence of title from Conde. The confirmation was "to the legal representatives of Auguste Conde." The plaintiff contended under the decision in Bissell *vs.* Penrose, as well as some other cases where the confirmation was directly to the claimant.

That the confirmation was to Lemonde as claimant before the Board.

In answer to this the court says (at page 607), "on looking into the cases cited on the part of the plaintiff, it will be seen that the confirmations which there appeared were either to the assignee, claimant by name, or, in general terms, that is, to the original grantee and 'his legal representatives,' and when in the latter form, it was the assignee, claimant, who had presented the claim before the Board, and had furnished evidence before it of his derivative title, and which had not been the subject of dispute. The present case, therefore, is different from either of the cases referred to."

The court having thus decided that the case was a different

one in principle from that presented in Bissell *vs.* Penrose, considers what the effect is of such a state of facts as presented by the proceedings upon the confirmation, when no evidence of assignment was filed or exhibited, and comes to the conclusion that such a confirmation "leaves the question open to inquiry in a court of justice as to the party to whom the certificate, patent or confirmation should enure," and decides that there was evidence enough to go to the jury, whether such assignment was in fact made.

This distinction between the two classes of cases has been uniformly made by the State courts, as will be seen by reference to the other decisions cited.

II. The equitable owner of the New Madrid land, at the issuing of the New Madrid certificate, is the person to whom it belongs.

Ever since the year 1838, in the State of Missouri, the title to land located under a New Madrid certificate is to be determined in an action of *ejectment* according to the *equitable* rights of the parties. See act relating to Ejectment, Session acts of 1838–39, secs. 2 and 3, p. 40; Revised acts of 1845, secs. 11 and 12, p. 442. Subsequent acts: Mitchell *vs.* Tucker, 10 Mo. 260.

The title to the newly located land belongs only to the person owning the land, in lieu of which the newly located land was located: Wear *vs.* Bryant *et al*, 5 Mo. 147; Kirk *vs.* Green, 10 Mo. 252; Page *vs.* Hill, 11 Mo. 149.

If then, in an action for possession in which the title rests upon a New Madrid certificate, the equities arising in the case are to be considered. What sort of equity has the plaintiff claiming under Butler for land which Bankson bought and paid for to Butler, and which Bankson could, at any time after the three years, have compelled him to convey if conveyance was needed?

GLOVER & SHEPLEY,
For Respondent.